Supreme Court, U.S.
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981345 FEB 8 - 1999

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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

MARK B. RASMUSSON, et. al.,

Petitioners,

v.

LAWRENCE E. FROST, et. al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

APPENDIX G
Expert Witnesses Affidavits

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AFFIDAVIT OF EDWARD H. WAGNER

APRIL 3, 1997

1. I, Edward H. Wagner, state that this affidavit is in addition to my affidavit dated March 18,1997, which includes attachments one (one) through six (6). That affidavit and attachments are made a part of this affidavit. My qualifications are set out in my affidavit dated March 18, 1997.

2. I know through my training and experience that prior to initiating a multi violation investigation the normal procedure is to conduct inquiries of all available law enforcement and regulatory data bases, contact other law enforcement agencies and officers and review their files, interview available informants, and review the results of any prior investigations. The results of prior investigations would include a review of any related trial transcripts, and a review of the trial testimony of key witnesses. I know that as both an agent and supervisor I would want to even more closely scrutinize the results of previous investigations where the subject(s) had been acquitted. In addition, as part of a grand jury investigation, agents participating in a task force investigation would have access to IRS tax information including tax return information, and the results of prior audits and investigations. I know through my experience it is customary that when the El Paso Police Department, or the El Paso County Sheriff's Office participate in a task force investigation with federal agencies, one of the federal agencies will normally be the lead agency. However, there is nothing that precludes a state and local agency from being the lead agency.

3. The USCS, as the lead agency, and USCS agent Frost and the other agents of the Financial Task Force (FTF) should have assured that one of the agents or officers, as part of their development of background information, made the previously cited contacts and

reviewed the referenced information to objectively and reasonably evaluate their case potential relating to RASMARK, the Rasmussons and Andrew Gantkessy before launching a full a scale investigation again them.

4. Having sat in on agent Frost's deposition and reviewed his declaration [(attachment 7); see App. 955-65] I found no indication that agent Frost or the FTF obtained internal USCS regulatory or compliance reports relating to RASMARK. Agent Frost had access to the results of prior USCS reports involving the inspection of RASMARK aircraft and yet failed to obtain these reports or ignored the results of the prior inspections of RASMARK aircraft. During his deposition [(attachment 8, page 76); see App. 421] agent Frost intimated the FTF had seized one aircraft belonging to RASMARK, a Lear Jet with tail number N7GP, which belonged to a Guillermo Portillo. A simple but complete check with the Federal Aviation Administration (FAA) would have identified the true owner of the aircraft and the fact that RASMARK had filed a mechanics lien on the aircraft related to non payment of services performed by RASMARK as documented in Mark Rasmusson's affidavit. FAA records would also show any FAA violations made by RASMARK aircraft. There is no indication that any of this information was obtained. If agent Frost and the agents associated with the FTF had contacted DEA agents Tom Lenox and Steve Perkins, the case agents on the Jesus Flores OCDETF investigation, in which Mark Rasmusson was indicted, they would have been told Mark Rasmusson was never a major player in that investigation as stated in both the Lenox and Perkins declarations [(attachments 9A and 10); see Apps. 966 and 1053]. As part of his investigation, agent Frost had access to probate records documenting the inheritance of Mark B. Rasmusson. Agent Frost during his deposition [(attachment 8, page 24); see App. 380] stated he attempted to document Mark B. Rasmusson's inheritance, but the probate was very confusing and disarrayed. However, assigned to the FTF was IRS Special Agent Fonda Hivick, who is also a Certified Public Accountant (CPA) as reflected in her deposition [(attachment 11, page 12); see App. 529]. Agent Frost never solicited the help of agent Hivick to fully understand the magnitude of Mark B. Rasmusson's inheritance, a

major source of funds, for Mr. Rasmusson during the years he was investigated.

5. During his deposition, [(attachment 9B, pages 14 & 15); see Apps. 463-466] agent Lenox testified that during the Flores DEA OCDETF investigation he did not do any type of background check on Mark B. Rasmusson before initiating his case against him.

6. During both the DEA OCDETF investigation of Jesus Flores (and Mark Rasmusson) and the subsequent USCS investigation, and FTF OCDETF investigations of RASMARK, Mark Rasmusson, Deborah Rasmusson and Andrew Gantkessy, agents Lenox and Perkins of the DEA, and agent Lawrence Frost of the USCS, other agents and other partners of the FTF failed to obtain important background information and documents which would have showed that RASMARK was a legitimate company, carrying out a legitimate business activity, from which Mr. and Mrs. Rasmusson received completely legal proceeds. The actions of the USCS, as the lead agency, the USCS management, agent Frost and the other agents involved with the FTF, and their failure to obtain this information, precluded a fair and objective investigation of RASMARK, Mark B. Rasmusson, Deborah Rasmusson, and Andrew Gantkessy.

7. Through my training and experience I am also familiar with the term lookouts. I am familiar with both Treasury Enforcement Communications System (TECS) lookouts, and Federal Aviation Administration (FAA) lookouts. I know that an agent can place a TECS lookout on persons, vehicles, or aircraft entering or leaving the United States. A lookout includes such information as the name of the agent placing the lookout, a telephone number where they can be contacted, the duration of the lookout, and the type of action requested by the agent. An agent can request specific action pursuant to the lookout such as: notify the agent when a person, vehicle, or aircraft enters or exits the United States; search the person, vehicle, or aircraft; identify all the subjects in a vehicle or aircraft, and take no further actions, or if subjects are known to be dangerous, approach with caution. An FAA lookout can be placed on

aircraft regarding domestic flights and can include similar instructions; however, there is not the same search provisions as those at an international border. An agent has very limited or no authority to search an aircraft on a domestic flight in the absence of a search warrant.

8. I have reviewed the affidavits of RASMARK pilots Jerry Burnett and the handwritten statement of David Jackson [(attachments 12 and 13); App. 350]. Burnett testified concerning searches of RASMARK aircraft on October 18, 1988 in Brownsville, Texas and July, 1990 in El Paso, Texas. In both incidents, the aircraft were involved in domestic flights where the agents or officers had no implied legal search provision, in the absence of a search warrant. The actions and numbers of agents in each incident indicates a lookout was in place. The search of the RASMARK aircraft on October 18, 1988 was not voluntary based on the number of agents present with their guns drawn and pointed at the crew members. The circumstances of the stop of the RASMARK aircraft on July of 1990 also indicates there was a lookout in place. Burnett
stated he was stopped by USCS vehicles and ordered to clear customs. The agents alleged that Burnett had crossed into Mexican space, which Burnett denied.

9. RASMARK pilot David Jackson testified to being stopped on June 16, 1993 in Dallas, Texas and again on September 1, 1993 in Dallas, Texas. According to Jackson the search on June 16, 1993 involved agents of the USCS and officers of the Dallas Police Department. The agents again approached the RASMARK aircraft with their guns drawn. When asked if he (Jackson) would sign a consent to search, Mr. Jackson asked "What if I refuse?" Mr. Jackson was told by a female agent they would keep them overnight until a search warrant could be obtained. Because the cargo was time sensitive Mr. Jackson signed the consent to search. One of the agents indicated to Jackson that RASMARK was on a "hit list." After the aircraft was searched, the plane and its' crew were released.

10. On September 1, 1993 a RASMARK aircraft and pilot David Jackson were again stopped in Dallas, Texas this time by two

DEA agents who wanted to search the aircraft. When Mr. Jackson asked to see their search warrant, one of the agents replied he didn't need a warrant. When told by Mr. Jackson that only FAA inspectors could search the plane without a warrant, the DEA agent called for an FAA inspector to meet him. The FAA inspector then inspected the plane and checked the pilot and copilot's papers.

11. The facts and circumstances of each of the searches indicate there were lookouts in place on RASMARK aircraft. I know through my training and experience that lookouts are normally left in place for thirty days and then removed. Because there was no contraband seized in any of the referenced stops and searches, the normal procedure would have called for removal of the lookouts. However, the statements of Mr. Burnett, and Mr. Jackson, and Mark Rasmusson indicate lookouts on RASMARK aircraft were placed over a period of years without any results, that is, no contraband was seized. The conduct of the agents, the ongoing placement of the lookouts without results did not serve any reasonable or objective law enforcement purpose nor was the behavior by the agents reasonable.

12. I have reviewed the declaration of George Salas [(attachment 14); see App. 973]. In his declaration /affidavit [(page 20); see App. 973] George Salas denied working as a plant or in an undercover capacity for agent Lawrence Frost. Salas in his deposition [(attachment 15); see App. 479] stated he obtained approval from the El Paso Police Department for his outside employment. Salas' sworn deposition is not credible in that the El Paso Police Department would have never approved his request to do private security work for Deborah Rasmusson, knowing that RASMARK and the Rasmussons were the subjects of a Federal, and State and Local Task Force investigation for money laundering and other alleged violations. That EPPD knew the Rasmussons were under investigation is supported by the fact that EPPD is an FTF partner and the fact that Sergeant McBain, a narcotics officer in various state and federal task forces quizzed Salas about the Rasmussons and the FTF investigation casts serious doubt as to Officer Salas veracity in his sworn affidavit. Once officer Salas agreed to provide information to agent Lawrence Frost he became an undercover

agent for the Financial Task Force. Also, as part of his "outside employment" officer Salas at the end of February, 1992 provided the names, addresses, and dates of birth of Mark Rasmusson and Deborah Rasmusson to a friend of his who is an FBI agent and asked him (his friend) "to check into them to make sure that there would be no problems with me continuing to work for Deborah Rasmusson." It is reasonable to infer that once Salas was made aware that the Rasmussons were the targets of a federal investigation that Salas informed his supervisor who advised Salas that EPPD knew about the investigation and was part of the investigation as a FTF partner and Officer Salas was required to remain in the confidence of Mrs. Rasmusson and continue to report to FTF agent Frost. Salas next stated in his declaration that "on March 2, 1992 I received a phone call from Mr. Lawrence Frost and he identified himself with the United States Customs Service and advised me that he was conducting an investigation into Mark and Deborah Rasmusson and Rasmark Jet Charter and that if I observed anything unusual or illegal that the Rasmusson's were doing that I contact him immediately." Agent Frost states in his deposition that it was Salas who contacted Frost regarding the Rasmussons. Salas, in his declaration, goes on to say he worked another two and half months for Deborah Rasmusson, yet he was concerned in late February and contacted an FBI friend to make sure there were no problems in working for Deborah Rasmusson. After learning that RASMARK and the Rasmussons were under investigation he continued his employment. In his deposition [(attachment 15, page 36); see App. 484] officer Salas states he was paid by the Rasmusson's six to eight times, and yet was providing information to the FTF and agent Frost. Agent Frost in his Affidavit for Search Warrant, dated May 26, 1992 [(attachment 24, paras 4-6); see App. 908] states officer Salas contacted him in March, April, and May, and again on May 23, 1992. The facts indicate that officer Salas was in effect an undercover agent for the FTF and agent Frost.

13. Officer Salas, in both his declaration and his deposition,acknowledged going to the Rasmusson residence at night and spending several hours with Deborah Rasmusson and Salas admitted taking Deborah Rasmusson to his personal residence, and to an El Paso

Police Department function at O'Henry's, a local bar and restaurant. Deborah Rasmusson in her sworn statement stated that officer Salas appeared very concerned for her safety and subsequently convinced her to hire him as a body guard. Deborah Rasmusson also stated that she and Salas had an affair that lasted until May 23, 1992. Deborah Rasmusson also stated she had sex with officer Salas approximately six times including in her residence and in Salas' residence. When asked about his affair with Deborah Rasmusson during his deposition, Salas' attorney strongly objected to the question which remains unanswered. During that time, Salas gained access to their residence, office, and had the related keys. Salas also implied to her that her husband was involved in criminal activities and was plotting to kill her. Salas on several occasions appeared at her residence and the RASMARK offices in uniform driving his patrol car.

14. If Salas was not acting in an undercover capacity he engaged in gross misconduct involving the use of his time, his patrol car, and engaging in a two and one half month affair with Deborah Rasmusson, the alleged subject of a FTF investigation. If officer Salas was acting in an undercover capacity he was not truthful in his declaration or deposition. Salas' affair with Deborah Rasmusson the target of a FTF investigation, in and by itself constitutes misconduct on his part as an officer of the El Paso PD.

15. Attachment 6 (see App. 1093) is a USCS Report of Investigation dated June 14, 1993 prepared by USCS agent Fred Schroeder relating to interviews of Andrew Gantkessy on June 2 and June 3, 1993. The report reflects at least five law enforcement agents were present to conduct the interview. Through my training and experience I know that it is improper to conduct an interview with five agents or officers present. That interview environment would be both intimidating and coercive. Also, any statement given by a witness could not be considered voluntary. I have never interviewed a witness with four other agents and officers present. In addition, Iam not aware of any interview with a witness being conducted by five or more agents, including when I participated on the DEA OCDETF Task Force. The use of five or more agents by agent Frost during the interview did not

serve any reasonable or objective law enforcement purpose. The summary of the June 2, 1993 contact with Andrew Gantkessy consists of five lines. However, FBI agent Joe Acosta testified in his sworn deposition that the June 2 interview with Andrew Gantkessy lasted thirty to forty-five minutes [(attachment 16, pages 57 & 58); see App. 691]. It is not credible that a thirty to forty-five minute interview could be accurately summarized in five lines. Per agent Acosta's deposition they asked Andrew Gantkessy to assist them, and either he or USCS agent Fred Schroeder called Andrew Gantkessy to ask him to come to the June 3 interview. The June 2 interview makes no mention that Andrew Gantkessy was asked to "assist". In his sworn declaration [(attachment 17, pages 2 & 3); see App. 1033, para 11] agent Acosta stated the Task Force agents had previously called to make an appointment. Agent Acosta stated there were 6 to 7 members of the Task Force present to conduct the interview. Acosta also stated "there were more officers present than would usually be necessary to conduct an interview because the members represented various agencies with different, individual interests in potential money laundering violations." Agent Acosta's statement is not believable. I have participated in many multi agency investigations including DEA, OCDETF Task Force investigations, and the normal procedure was to conduct interviews with two agents. I have never participated in an interview of a witness using five or more agents nor am I aware of anyone else who conducts a witness interview with five or more agents. Agent Acosta's deposition and declaration contradicts USCS agent Fred Schroeder's declaration [(attachment 18, page 3); see App. 995, para 10] which states Andrew Gantkessy voluntarily came to his (Schroeder's) office. In addition, during his sworn deposition agent Schroeder denied that they asked Andrew Gantkessy to cooperate [(attachment 19, pages 77 & 78); see App. 594]. Officer James Holland testified during his deposition that members of the FTF had been conducting surveillance of Andrew Gantkessy and his place of employment prior to the June 2, 1993 interview [(attachment 20, page 37); see App. 622], another fact omitted by agent Schroeder in his report.

16. The USCS report relating to Andrew Gantkessy's interview on June 3, 1993 [(attachment 6); see App. 1093] failed to make any mention that USCS agent Schroeder and FBI agent Acosta

asked Andrew Gantkessy to make a monitored telephone call to Mark and Deborah Rasmusson and to wear a wire. In addition, the report fails to document numerous threats made by Schroeder and Acosta, as reflected in Andrew Gantkessy's affidavits.

17. I know through my training and experience that the primary motive in interviewing Andrew Gantkessy with five or more agents was to intimidate him and coerce him into cooperating with the FTF and participating agents and agencies. The USCS report of Andrew Gantkessy's interview and the related actions by members of the FTF were not reasonable and objective, but designed to place fear and intimidation in Andrew Gantkessy for the purpose of making him cooperate in the investigation of RASMARK, Mark Rasmusson, and Deborah Rasmusson.

18. Attachment 21(see App. 1065) is USCS Report of Investigation, dated September 17, 1992, prepared by USCS special agent Eric Mills. The report discusses a surveillance at the RASMARK offices on September 16, 1992. The report is insufficient for evidence purposes. The report does not show which agent observed which activity. The normal procedure is to maintain an evidence log as to which agent observed the activity referenced or to have each agent prepare a memorandum of surveillance documenting the activity they personally observed. USCS agent Eric Mills in his deposition [(attachment 22, page 94); see App. 650] stated no separate memorandums of surveillance were prepared. The report goes on to state [(page 3); see App. 1068] at "1215 hrs" a red Mercedes. . . operated by two HMA's arrived at RASMARK and both men went inside. The USCS report fails to disclose that RASMARK was located at 6805 Boeing Drive inside of Julies Aircraft Services, Inc., also known as Julie's Pilot School and Flight Service. I have been to the building and the building was and is occupied by several tenants, all of who share the same parking lot. The building occupants include a parts and supplies section and aircraft repairs section. The building is open to the public and persons entering the building can go to any number of activities without ever going near RASMARK. In fact, RASMARK was located on the second floor, with no outside windows. Once a person enters the front door of the building it is impossible to tell which

activity they went to, including RASMARK. In his deposition, Eric Mills admitted the FTF did not did not follow the suspects into the building to determine where the HMA's went.

19. Agent Mill's report further states that at 1605 hrs. the red Mercedes, WMA driving, Hector BARRERA passenger, . . . departed", however, the report fails to disclose how agent Mills knew the passenger was Hector BARRERA. When questioned during his deposition [(attachment 22, page 100); see App. 660] agent Mills could provide no explanation as to how the FTF knew the passenger was Hector Barrera, i.e., through a drivers license photo etc. Hector Barrera was an alleged drug smuggler and this was clearly a very inept effort by agent Mills and FTF to associate RASMARK and Mark Rasmusson with drug smuggling. The actions of USCS agent Eric Mills and the FTF, including agent Mills' report are not reasonable and objective. The report fails to disclose vital information known to the FTF agents, i.e., the parking lot was shared by all the occupants of the building, that the building belongs to Julie's Aircraft Service, Inc., that you cannot tell where persons entering the building through the front door go once the door closes, and that the FTF never verified that the passenger in the red Mercedes was in fact Hector Barrera (other than the vehicle was associated or registered to Barrera).

20. I have reviewed a USCS report dated May 21, 1993, prepared by USCS agent Fred Schroeder relating to trash retrieval at 11157 Leo Collins on May 3, 1993 [(attachment 23); see App. 1090]. The report states Detective Jerry Keith obtained the residential trash from 11157 Leo Collins, El Paso, Texas. The report does not state how the trash was obtained, by Detective Keith going on the premises of the Rasmusson residence, or from an El Paso Sanitation Department employee. If it was obtained from a Sanitation Department employee, that person should have been identified by name to establish a proper chain of custody. The report also does not indicate that the FTF had received written permission from the Director of the Sanitation Department which is the policy of the El Paso Sanitation Department.

21. The report shows [(page 2); see App. 1090] among the items seized "a plastic bottle with the hollow, plastic part of an ink pin

stuck in middle. The top of the bottle was covered with aluminum foil and small holes were punched in the foil." According to the report agent Schroeder conducted a chemical field test of the residue on the foil and received a positive reaction for cocaine. The report also shows another item seized was "a silver spoon with black residue in the bowl of the spoon." Agent Schroeder again conducted a chemical field test of the residue in the bowl of the spoon and received a positive reaction for cocaine.

22. The report does not indicate that agent Schroeder ever attempted to do any type of fingerprint identification to see in fact who handled the drug related items. Mark Rasmusson's affidavit states that during that period of the investigation the Rasmussons were having remodeling done on their residence and there were several people, including construction workers in and around their residence.

23. Attachment 24 (see App. 908) is USCS special agent Lawrence E. Frost's affidavit for a search warrant dated May 26, 1992, relating to a brown cardboard file box. On page one of agent Frost's affidavit he states he was told by officer George Salas that, Deborah Rasmusson told him (Salas) that her husband, Mark Rasmusson, was attempting to kill her. Frost also states that during April and May of 1992, he received two additional telephone calls from Salas who told him that Deborah Rasmusson continued to fear for her life and that she felt that the reason she was in danger was her husband's criminal activity. Deborah Rasmusson in her sworn affidavit stated Salas implied that Mark (her husband) was plotting to kill her and was involved in illegal acts. Deborah Rasmusson also stated that during her affair with Officer Salas he attempted to convince her that Mark was associated with some really bad people who were involved in drugs and money laundering. Salas insisted she should be afraid of Mark (Rasmusson).

24. There is no indication that agent Frost ever prepared any USCS reports relating to the alleged conversations with George Salas in March, April and May of 1992. In fact, officer Salas' testimony on page 43 of his deposition contradicts agent Frost's testimony [(attachment 15); see App. 908]. Officer Salas states he told Frost "I

told him who I was and how I got to work with them (the Rasmussons) and that I had simply wanted to make sure that I wasn't getting into anything I wasn't aware of." Salas in his sworn deposition makes no mention of telling agent Frost that Deborah Rasmusson alleged her husband Mark Rasmusson was attempting to kill her.

25. Also in the Affidavit for Search Warrant dated May 26, 1992 [(attachment 24, page 4); see App. 909, para 6], agent Frost states "on May 23, 1992 I was contacted by Sergeant Salas. Sergeant Salas stated that Deborah Rasmusson had decided that she wished to meet with federal agents to provide information relating to the criminal activities of Mark Rasmusson and associates." Officer Salas in his deposition stated he contacted agent Larry Frost first because "Larry Frost was a Federal agent and I knew they had a witness protection program. And the police department doesn't have one of those. So I didn't there was anything we could to do to help her." Officer Salas' deposition indicates the primary reason Deborah Rasmusson went to the USCS office was because she was told by Salas she could be placed in the witness protection program. However, there is no mention of that in agent Frost's affidavit for search warrant.

26. In addition, agent Frost in his affidavit knowingly and willfully failed to advise the court that when Deborah Rasmusson made the alleged statements regarding her husband Mark Rasmusson on May 23, 1992 in the USCS office Deborah Rasmusson was high on controlled substances and drank a six pack of beer provided to her by agent Lawrence Frost. Agent Frost told attorney William Cole [(attachment 1, page 2); see App. 1292] that Deborah Rasmusson had come into his office within the previous 30 days high on controlled substances (attorney Cole spoke to agent Frost on June 17, 1992). The only time Deborah Rasmusson was in the USCS office was on May 23, 1992. In his deposition agent Frost admitted that he gave Deborah Rasmusson a six pack of beer [(attachment 8, pages 63 & 67) see App. 401]. Frost also admitted that it was not normal procedure to give a potential witness alcoholic beverages. Deborah Rasmusson in her sworn affidavit stated she drank the entire six pack. Continuing this conduct agent Frost attempted to get Deborah Rasmusson, a woman high on controlled substances, and whom he had provided a six pack of

beer which she drank, to sign a consent to search form (for the offices of RASMARK).

27. In his Affidavit Search Warrant, relating to the box of records, agent Frost states "Ian (Deborah Rasmusson's son), stated to U.S. Customs Special Agents Fred Schroeder and Eric Mills that everything that agents needed to convict Mark Rasmusson was in the box his mother carried." Agent Mills stated in his deposition [(attachment 22, page 60); see App. 644] that he gave credence to what Ian said "Because he was -- Ian was attributing that to what his mother had said." Which is the same mother, who according to agent Frost, was high on controlled substances, and had consumed a six pack of beer (provided by agent Frost). Another important fact that agent Frost and the FTF failed to disclose to the court. Agent Frost deliberately failed to disclose the preceding facts to magistrate Janet Ruesch because I believe agent Frost knew the magistrate would not sign the search warrant.

28. I have reviewed agent Lawrence Frost's affidavit for Search Warrant, dated November 19, 1993, related to the Rasmusson residence at 11157 Leo Collins, El Paso, Texas [(attachment 25); see App. 913, para 6]. In paragraph 6 of his affidavit Frost states "This investigation is predicated on evidence that the company is being utilized as part of a money laundering conspiracy." The fact is there was no evidence other than the uncorroborated statements of informants, and the alleged statements of Deborah Rasmusson. Per agent Frost's own admission, Mrs. Rasmusson was high on drugs, and on top of that he gave her a six pack of beer to drink. Based on my training and experience the uncorroborated statements of informants do not constitute evidence.

29. In paragraph 8 (see App. 914) of his affidavit Frost alleges the DEA (OCDETF) investigation was predicated on "facts which indicated that Mark and Debra Rasmusson had provided transportation of controlled substances . . . " That statement is a lie. DEA Special Agent Tom Lenox, one of the two case agents for the DEA OCDETF investigation, testified under oath in his deposition that the task force did not develop any evidence that Mark B. Rasmusson was engaging in

transporting drugs or any illegal contraband for the Jesus Flores organization [(attachment 9B, page 28); see App. 475].

30. In paragraph 15 (see App. 916) agent Frost implies that two payments in the amount of $8,000.00 each received by RASMARK "on consecutive dates is frequently a form of structuring transactions to avoid the reporting requirements contained in Title 26 United States Code section 6050I." What agent Frost doesn't state is the fact that the violation would have been against the customer making the payments, if there was a violation, and also the cited statue is an IRS violation and IRS never investigated or had any case relating to RASMARK or the Rasmussons. Agent Frost's affidavit [(paragraph. 18); see App. 917] states that RASMARK pilot Jerry Burnett concluded "Flores was in the illegal drug business . . ." and that Burnett "had several conversations with the Rasmussons regarding Flores and 'his people' being in the drug business and that both Mark and Debra Rasmusson told him (Burnett) that they knew that Flores was in the drug business." In his sworn affidavit dated September 20, 1996 Jerry Burnett denied making the referenced statements to DEA as he did during Mark Rasmusson's trial, which agent Frost acknowledges in his affidavit [(paragraph 19); see App. 918]. Yet he includes this information he knew was false anyway. In paragraph 20 (see App. 917, para 18) agent Frost is discussing a DEA Form 6, dated September 7, 1990 [(attachment 26); see App. 1195, para 4], specifically paragraph 16. In his sworn affidavit dated September 20, 1996 [(attachment 12); see App. 338], Mr. Burnett stated paragraph 16 (see App. 1195, para 4) of the DEA report is a total lie other than he did tell agent Perkins RASMARK had done approximately $50,000 in work for Flores. Because agent Frost knew that Mr. Burnett had already denied many of the statements attributed to him (Burnett), agent Frost had an obligation to interview Mr. Burnett and determine the truth not just to use statements that supported his affidavit.

31. In paragraph 21 (see App. 918), agent Frost discusses another DEA Form 6, prepared by DEA Special Agent Perkins. Agent Perkin's report and agent Frost's affidavit are again riddled with incorrect statements. In a sworn affidavit dated September 24, 1996 [(attachment 27); see App. 335], Albert Apodaca denied stating that Mark Rasmusson asked if he should re-construct invoices to match the

amounts of which government agents were aware. Mr. Apodaca also stated he did not tell the agents that Mark Rasmusson wanted to amend his May 1990 financial report to include an $11,000 cash transaction, but in fact told them the money ($11,000) was from several cash transactions. Mr. Apodaca also stated he did not tell the agents he was alarmed by Mark Rasmussons actions, but that he was alarmed because the agents contacted him. Mr. Apodaca further stated he told the agents (Perkins) that he always knew Mark Rasmusson to be very honest, and that he was not aware of Mark Rasmusson being involved in any illegal activity. Agent Perkins neglected to put that in his report, and because agent Frost did not attempt to interview Apodaca regarding the truthfulness of Perkins report, he also failed to include that information in his affidavit.

32. Another statement attributed to Mr. Apodaca by agent Perkins and later agent Frost is that "he was relatively familiar with the major accounts of RASMARK Jet Charter and that he had never heard of Jesus Flores nor Vista Remodeling." Mr. Apodaca in his sworn affidavit stated the agents (DEA) implied Flores/Remodeling was a major account which is not true. Even if Flores/Vista Remodeling had spent $50,000 that would not make them a major account. Ford Motor and Chrysler were major accounts and their business with RASMARK was close to or in excess of a million dollars a year.

33. In paragraph 24 (see App. 920) agent Frost discusses a document which bears the initials "MR." In fact the document was initialed "DR" for Deborah Rasmusson (attachment 28).

34. In paragraphs 25 through 27 & 29 (see App. 920) agent Frost discusses an FBI confidential source who alleged among other things that Mark Rasmusson was involved in money laundering, received $500,000 in controlled substance proceeds, and was buying aircraft parts with the proceeds of trafficking in controlled substances. The $500,000 was alleged received from Jesus Flores during 1989 and 1990. The FBI source also alleged that in the "past" Mark Rasmusson would travel throughout the United States in his aircraft and collect proceeds of trafficking in controlled substances and then deliver the proceeds to the interior of the Republic of Mexico. None of the

confidential informants alleged statements were ever corroborated. In addition, agent Frost failed to disclose to the court that IRS did an audit of RASMARK for the years 1989, and 1990 which resulted in a "no change" as documented in attachment 29 (see App. 1290), which is a photocopy of the IRS examination changes. The IRS audit results disprove the informants allegations. As part of an audit IRS does invoice matching for both income and expenses.

35. Frost's affidavit, paragraphs 30-32 (see App. 921), reference an FBI confidential source referred to as "FBI 1." The FBI confidential source alleged that in December, 1991 he/she saw a suitcase with what appeared to be controlled substances and U.S. currency. FBI-1 also reported that during February, 1992 he/she had seen three or four storage type boxes underneath Debra Rasmusson's bed and in her closet. FBI-1 reported seeing business records from RASMARK Jet Charter and boxes of bank statements from banks in Colorado, Alaska, Cabo San Lucas, Mexico, New York and the Cayman Islands. Agent Frost again uses uncorroborated statements of a confidential source. I know through my training and experience if a "reliable" informant provided timely information that they saw controlled substances and currency in a residence, the normal procedure would be to attempt to get a search warrant. Since there is no indication that the FBI attempted to get a search warrant the informant was not considered reliable, or the information was not provided timely by the informant. If the information was not provided timely that would go to the informants reliability. From late February 1992 until May 23, 1992 officer George Salas had access to, and was in and out of the Rasmusson home. During that time officer Salas stated in his deposition he never saw any contraband or illegal drugs or large sums of money in the home [(attachment 15, page 84); see App. 522]. Agent Frost had access to officer Salas observations, but failed to disclose that information to the magistrate. Officer Salas also stated in his declaration [(attachment 14, page 3); see App. 978, para 5] that on March 2, 1992 when he talked to agent Frost he told Frost he had not observed anything unusual or illegal.

36. Frost's affidavit paragraphs 35 through 44 (see App. 923-925), discuss the officer Salas, Deborah Rasmusson contacts

culminating in the seizure of a box of records. In paragraph 35 agent Frost states he was contacted by officer Salas in March of 1992 and Salas stated he understood that Debra Rasmusson was of interest to the Customs Service and that he (Salas) would provide any information she provided to him. Officer Salas' account is slightly different. Officer Salas in his declaration stated he received a telephone call from Mr. Lawrence Frost and he identified himself with the U.S. Customs Service. Agent Frost asked him to contact him (Frost) immediately if he observed anything unusual or illegal. As previously noted, agent Frost failed to advise the court in his affidavit that officer Salas had not observed anything unusual or illegal.

37. Agent Frost in his affidavit describes his conversations with Deborah Rasmusson and her alleged statements regarding Mark Rasmusson, and statements made by Ian, Deborah Rasmusson's fifteen year old son [(paragraphs 37, 38, 40, & 41); see App. 923]. In paragraph 38, agent Frost states Ian Maye (the fifteen year old son) stated he had been telling his mother to get away from Mark Rasmusson for at least five years because Mark Rasmusson is a criminal (paragraph 38). That means Ian Maye at the age of ten knew Mark Rasmusson was a criminal, which is not a very credible statement. Agent Frost failed to disclose in his affidavit important information to the court relating to the May 23, 1992 incident. He failed to disclose that Deborah Rasmusson came to his office high on controlled substances, which he admitted to attorney William Cole [(attachment 1); see 1292], and that he had given Deborah Rasmusson a six pack of beer [(attachment 8, pages 66 & 67); see App. 406], which Deborah Rasmusson in her sworn affidavit stated she drank in total.Agent Frost further states in his affidavit [(paragraph 40); see App. 924] that "Ian Maye, stated to U.S. Customs Special Agents Fred Schroeder and Eric Mills that everything that the agents needed to convict Mark Rasmusson was in the box his mother carried." When agent Mills was questioned during his deposition [(attachment 22, page 60); see App. 644] as to why he gave so much credence to the statement of a fifteen year old child, agent Mill stated "Because he was -- Ian was attributing that to what his mother had said." His mother of course was high on controlled substances and had also consumed a six pack of beer provided by agent Frost.

38. In paragraph 44 (see App. 924) of his affidavit agent Frost states on May 27, 1992 he opened the box of records, which had been seized from Deborah Rasmusson, which was witnessed by FBI Special Agent Joe Acosta and IRS Special Agent Fonda Hivick. The box according to agent Frost contained a mixture of business records from RASMARK Jet Charter, including numerous tax records. According to Frost the box also contained records relating to the personal finances of Mark and Debra Rasmusson. Agent Frost also states in his affidavit [(paragraph 44); see App. 924] "The contents of the box upon analysis indicted (agent Frost's spelling) that the Rasmussons are engaged in tax evasion." That statement is a lie to the court by agent Frost. Agent Frost during his deposition [(attachment 8, pages 125 & 126); see App. 458 attempted to explain his lie by the following "I'm going to have to explain to you, the way that paragraph reads is poor sen-text on my part, poor writing on my part. The analysis of the box did not stand alone. However, through the course of investigation, the type of tax evasion we found is just under reporting of income. In other words, cash proceeds stuck in a pocket and not reported." Agent Frost is not trained in criminal tax investigations, those statutes fall under the jurisdiction of the Internal Revenue Service. IRS Special Agent and Certified Public Accountant, Fonda Hivick state when questioned during her deposition [(attachment 11, page 28); see App. 538], about what information she saw in the box that led her to believe there might be a potential violation stated "I didn't see any information . . . No I didn't see anything in the box . . . Wait a minute, I think we've got crossed because I wasn't talking about the box, those records. I thought that you were talking about everything that I ever heard or seen or whatever." When asked "Did you see anything from the records in the box that would lead you to believe there was prosecution potential for Mark B. Rasmusson under IRS investigating authority?" agent Hivick stated "no, I didn't" [(pages 28 & 29); see App. 538].

39. Agent Frost also had access to the results of an IRS audit of RASMARK for the years 1989 and 1990, which shows IRS "no change" the returns [(attachment 29); see App. 1290] which means there was no additional tax due. As previously stated this information was not reported to the magistrate. Agent Frost during his deposition

[(attachment 8, page 18); see App. 371] stated he had not received training regarding tax evasion.

40. On page 10, paragraph 45 of his affidavit [(attachment 25); see App. 925] agent Frost states "on September 16, 1992 Special Agent Mills reported via written report he observed a red Mercedes . . . arrive at RASMARK Jet Charter at approximately 12:15 p.m." In fact, agent Mills had no way of knowing who the occupants of the vehicle went to see. Agents Mills and Frost attempt to make it appear that the parking lot belongs to RASMARK, when in fact it is associated with Julies Aircraft Service, Inc., a building which is occupied by a number of business activities such as an aircraft parts and supplies section, aircraft repairs section, and an aircraft engines section. RASMARK is just one of a number of business activities which share the parking lot. Once a person enters the building you cannot tell which activity that person is proceeding to. Agent Mills admitted in his deposition [(attachment 22, page 99); see App. 658] the FTF agents did not go into the building.

41. Agent Frost states in paragraph 47 of his affidavit that "on November 10, 1992 at approximately 9:10 p.m. United States Customs Inspectors at the Ysleta Port of Entry, El Paso, Texas carried out an intensive inspection of a 1989 Mercedes automobile driven into the United States from the Republic of Mexico by Debra Rasmusson. The vehicle was found to contain .1 gram of marijuana. Debra Rasmusson was found to be in possession of a switchblade knife. The vehicle was seized under U.S. Customs zero tolerance guidelines. Debra Rasmusson was arrested by the El Paso Police for possession of an unlawful weapon." Mark Riden, a retired USCS agent and group supervisor stated that when a person entering the United States from Mexico is found to have a switch blade knife, the normal procedure is to take the knife and to destroy it and allow the person to go on their way unless there are aggravated circumstances such as an assault. Mr. Riden also stated he is not aware of any person having their vehicle seized for possession of one-tenth gram of marijuana after 1971, even under the USCS "zero tolerance" policy (attachment 30).

42. Agent Frost states in paragraph 48 (see App. 926) that he

was notified at approximately 9:30 p.m. on November 10, 1992 that Debra Rasmusson was being detained at the Ysleta, Texas Port of Entry, so he and agent Mills responded to the Port of Entry. It is obvious from Frost's own statement that Mrs. Rasmusson's vehicle was stopped because of "lookout" placed by agent Frost and that the "intensive" search was also the result of agent Frost's lookout. The seizure of Mrs. Rasmusson's vehicle for one-tenth gram of marijuana and her arrest for possession of a switch blade knife were beyond the scope of normal USCS procedures conclusively indicates search and seizure was triggered by agent Frost's lookout. Per agent Frost's affidavit, paragraph 49 (see App. 926), he attempted to interview Debra Rasmusson. Deborah Rasmusson in her affidavit stated agent Frost never advised her of her rights even though she was in custody.

43. Agent Frost's affidavit [(attachment 25, paragraphs 52 through 56); see App. 926] references a USCS report and interview by USCS agent Fred Schroeder and El Paso Police Department officer James Holland with Arturo Vargas. Regarding paragraph 52, Mr. Vargas, in a sworn affidavit states "I never told the agents RASMARK was double invoicing and altering the dollar amounts and cargo on invoices. What I did tell the agents was that in some instances, if a customer or RASMARK lost an invoice, a new invoice would be prepared to replace it. Thus, a second invoice is generated for exactly the same amount. The dollar amount and cargo would not be altered.

44. In paragraph 53 (see App. 927), agent Frost states Vargas was told to make out cash receipts, however he (Vargas) never saw the cash that corresponded with the receipt. In his affidavit, Mr. Vargas stated his duties and responsibilities did not include handling cash receipts. What he discussed with the agents was the petty cash fund which he was in charge of, which was used for miscellaneous office expenses. Mr. Vargas stated "That is what the referenced 'cash receipts' related to, not the daily business receipts."

45. Agent Frost, in paragraph 56, (see App. 927) states "Albert Apodaca told Mr. Vargas that Debra Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991." Mr. Vargas in his sworn affidavit stated he had no recollection of that statement. Mr.

Vargas said what he did discuss with the agents was a potential discrepancy with the RASMARK accounts receivable which was the result of preparing a replacement or second invoice for a lost or missing invoice. Mr. Vargas stated "If the original receivable was not deleted from the computer it would cause a discrepancy/increase in the accounts receivable. However, this would not affect income because RASMARK was a cash basis corporation." Mr. Vargas was never shown a copy of the USCS report to verify or correct the statements attributed to him. CPA Albert Apodaca stated in a sworn affidavit [(attachment 27); see App. 335], "I never told Arturo Vargas that Deborah Rasmusson admitted not paying taxes on $100,000 of income in 1990 or 1991, as reflected in Larry Frosts affidavit." Mr. Apodaca, the CPA for RASMARK, said the IRS did an audit of RASMARK for the years 1989 and 1990, which resulted in a "no change" or no additional tax due. Attachment 32 is a photocopy of the USCS report of Mr. Vargas' interview, which was prepared by USCS agent Fred Schroeder.

46. In paragraphs 57 through 62 (see App. 928), agent Frost discusses a statement of El Paso Police Department officer Clifford Gongaware regarding activity around RASMARK which occurred on July 13, 1992. The interview of officer Gongaware took place on March 1, 1993. Based on my training and experience if the activity was in fact significant the El Paso Police Department should have taken immediate action, or immediately notified the USCS since the Police Department was aware RASMARK was under investigation. The normal procedure would have been for the USCS to timely document the incident via a written report. Instead, eight or nine months after the event, officer James Holland a member of the USCS FTF, interviewed officer Gongaware.

47. In paragraphs 63 through 64 (see App. 929), agent Frost's affidavit, reviews a statement made by El Paso Police Department officer Andrew De Angelo on March 1, 1993 regarding an incident that happened at RASMARK on July 24, 1992. Officer De Angelo alleges he saw two men with rifles, one facing north towards the main airport, and another guard with a rifle, posted to watch south towards Boeing Street. The El Paso Police Department took no action regarding this incident. It is incredible that the El Paso Police Department would

allow two men with rifles near the main airport and inside the airport security fence yet take no action, regardless of whether or not RASMARK was under investigation. Months after the incident, the USCS and FTF decide to document the incident, which does not lend much credibility that this was a significant incident. I know that non law enforcement persons are not allowed to walk around the airport areas with guns. Anyone walking around inside the airport security fence especially in the 0100-0300 AM time frame would be immediately arrested. Furthermore, officers assigned to maintain airport security would never permit anyone unknown to them to be inside the airport security area carrying guns without apprehending these unknown gun toters. Since persons with guns were observed, DeAngelo should have called for immediate backup and proceeded with backup to arrest the unknown person carrying guns.

48. Agent Frost in paragraphs 67 through 70 (see App. 929) discusses an interview he and agent Mills conducted with Gail Beach, owner of Aero Freight of El Paso, Texas, on March 9, 1993. Agent Frost failed to document in his Affidavit for Search Warrant, that much of the information she gave to agent Frost were rumors she heard from other people, which was Gail Beach's sworn testimony during her deposition [(attachment 33); see App. 902]. In addition, Gail Beach denied in her "Answers to Admissions Propounded By Plaintiffs [(attachment 34); see App. 1048]" the statement to agents Frost and Mills "that the Rasmussons were engaged in a 'kick back' scheme with Joe Sudomir and Andy Gantkessy," as stated in agent Frost affidavit, paragraph 68(see App. 930). Ms. Beach also denied [(attachment 34, admission no. 10); see App. 1048] telling agents Frost and Mills that Steve Thorn is the brother of one of her (Beach's) business partners and that Mr. Thorn had information on Mark Rasmusson and an associate, as stated by agent Frost in paragraph 71(see App. 930) of his affidavit.

49. In paragraphs 73 through 77 of his affidavit [(attachment 25); see App. 930] agent Frost discussed a telephone conversation with Steve Thorn regarding a conversation Mr. Thorn had with a Ron or Don Johnson, who agent Frost speculates is Donald Mitchell Joseph, an employee of RASMARK. Mr. Thorn alleges among other things, that Johnson and Mark Rasmusson were flying controlled substances and

drug money all over the place and that DEA is aware of their activities but can't catch them. In my experience real drug smugglers and money launderers do not go around making those type statements to individuals they don't know. Proper investigative procedure called for agent Frost to have shown Mr. Thorn a photo spread to identify that Johnson is in fact Joseph. Also, there is no corroboration of this alleged gossip of two parties drinking at a social function.

50. Agent Frost discusses an interview between USCS agent Schroeder, Detective Holland and Christopher Hines in paragraph 78 of his affidavit [(attachment 25); see App. 931]. Christopher Hines is alleged to have stated that Deborah Rasmusson gave him a check for $4,000 to cash and Hines was supposed to bring the money back to her. Deborah Rasmusson was alleged to have told Mr. Hines "the money was for a person who had given them a lot of business." Mr. Hines in his "Answers to Admissions" [(attachment 35); see App. 1060] denied stating the money was for a person who had given them a lot of business (admission 6) Hines also stated, according to USCS agents Schroeder and Frost (per his affidavit), "Debra Rasmusson went on to state that she owed Andy (Gantkessy) some money, but could not put his name on the check." Mr. Hines also denied making that statement [(attachment 35, admission 11); see App. 1062]. According to USCS agents Frost (per his affidavit) and Schroeder, Mr. Hines stated "Gantkessy and RASMARK Jet Charter were billing Ford for flights that did not occur." Mr. Hines also denied making that statement [(attachment 35, admission 13); see App. 1062]. The plaintiff, Mr. Gantkessy, in his sworn affidavit also denied the referenced allegations, including receiving the $4,000.

51. Pages 16 through 23(see App. 933, paras. 82-86) of Frost's affidavit reflect numerous references to trash retrieval at 11157 Leo Collins, El Paso, Texas, the Rasmusson residence. Both Mark Rasmusson and Deborah Rasmusson have both denied, in their sworn affidavits, throwing away any records relating to RASMARK as described in agent Frost's Affidavits for Search Warrants. Detective Baker during his deposition stated [(attachment 36, page 35); see App. 866] he did not obtain the name(s) of the Sanitation Department employees who picked up the trash and delivered it to him. Based on

my experience and training the Sanitation Department employee would have to be identified, and would be part of the chain of custody, for the items seized to be admissible as evidence. In addition, there is no indication that the USCS, or agents working with or detailed to the FTF, ever obtained any finger print identification, including on the items with trace amount of drugs.

52. USCS Agent Lawrence Frost in his affidavit [(attachment 25, paragraph 88); see App. 935], states detective Jerry Keith of the El Paso County Sheriffs Office saw a vehicle registered to Gildardo Rosales depart the business during surveillance of RASMARK Jet Charter. Agent Frost states Rosales is the target of an on going joint investigation into controlled substance trafficking. What agent Frost didn't advise the court is that RASMARK was located on the second floor of Julie's Aircraft, Service, Inc., and that there are a number of business activities in the building, all of who share the same parking lot. In addition, agent Frost fails to point out that the driver of the vehicle was not identified as being Gildardo Rosales.

53. In paragraph 91(see App. 935) of his affidavit agent Frost refers to an interview with Joe Seaverns in which Mr. Seaverns states Mark Rasmusson inherited a large sum of money from his grandfather, but the money had been "blown" before Mark Rasmusson arrived in El Paso, Texas. Agent Frost preferred using the uncorroborated word of Mr. Seaverns in lieu of fully understanding the Rasmusson probate records. In his deposition, agent Frost stated the probate was very confusing and disarrayed and he obtained what documents were available, and had to order some records, that he never received. This was agent Frost's explanation having traveled to Sacramento to obtain the probate records.

54. Paragraphs 95 through 100(see App. 936) of agent Frost affidavit discuss interviews of Andrew Gantkessy by members of the FTF on June 2, and June 3, 1993. Agent Frost states the June 2 interview of Mr. Gantkessy was conducted by himself and for other law enforcement officers, and that during this first meeting Mr. Gantkessy admitted receiving money from the Rasmussons and several trips from The Rasmussons. Mr. Gantkessy stated in a sworn affidavit that he

became upset and frightened, because agent Frost questioned him in a very aggressive manner, sometimes shouting and using profanity. Mr. Gantkessy stated when he asked permission to call his wife and attorney he was told if he got out of his chair he would be arrested. Mr. Gantkessy said the agents continued to question him non-stop for several minutes about Mark and Debra Rasmusson. Also, that after a while he became sick and finally told them he would agree to anything they said. Mr. Gantkessy stated once he said that and stopped denying their accusations, he was allowed to leave, but before the agents released him they ordered him to report to the U.S. Customs Office on Viscount Blvd. the following day. Mr. Gantkessy said at the time of the interview he was under a Doctor's care and being treated for a heart condition. Mr. Gantkessy said he had triple by-pass surgery in 1987 and a stroke in May of 1990.

55. Mr. Gantkessy stated the following day June 3, he went to USCS office where he was questioned by USCS agent Fred Schroeder and FBI Agent Joe Acosta. Agents Schroeder and Acosta asked him to wear a wire and to make a monitored telephone call. Mr. Gantkessy said he told agent Schroeder he would think about wearing the wire and give him the answer the next day. Mr. Gantkessy refused to make the phone call. Before he left agent Schroeder told him he would lose his job and go to jail if he refused to cooperate with him and the other agents. Mr. Gantkessy said agent Schroeder assured him that if he cooperated, nothing would happen to him. Mr. Gantkessy stated he discussed wearing the wire with two attorneys, Mr. Tony Silva and Mr. Bernard Panetta, both of who advised him not to do it. He subsequently called agent Schroeder and told him he would not wear the wire.

56. FBI Agent Joe Acosta stated during his deposition, the June 2 interview lasted 30-45 minutes maybe [(attachment 16, page 57); see App. 691]. Yet the USCS report relating to the interview consists of only five lines [(attachment 6); see App. 1093]. It is not credible that a 30-45 minute interview could be fully documented in five lines in a report. Agent Acosta said the June 3 interview lasted 15-20 minutes, but agent Schroeder needed almost two full pages to document that interview. Agent Acosta stated they (the FTF agents) did ask Mr. Gantkessy to assist them [(attachment 16, page 52); see App. 684].

Agent Schroeder in his deposition [(attachment 19); see App. 565] when asked if he (Schroeder) asked Mr. Gantkessy to cooperate; agent Schroeder reviewed his report and stated "I don't find that in my report . . ." In his affidavit Mr. Gantkessy said the figures referenced in the report and Frost's affidavit [(paragraph 99); see App. 937] were not true and that he never received any monies or kick backs from the Rasmussons or RASMARK. Mr. Gantkessy said he had been offered a job as a dispatcher with "Next Flight" not a percentage of the company.

57. Beverly Enriquez an employee of Ford Favesa stated in a sworn affidavit [(attachment 37); see App. 347], she was a traffic/distribution specialist, and was responsible for the set-up, shipment, and delivery of parts to Ford assembly plants. Mrs. Enriquez said she was also intermittently responsible for the handling of the carriers accounts as was Manuela Barron. Mrs. Enriquez stated Andy Gantkessy was their immediate supervisor, and he was responsible for contracting with the carriers, such as Aero Freight and RASMARK. Mrs. Enriquez also said Joe Sudomir was Andy's (Gantkessy) supervisor and he had the final say as to which carrier was used.

58. Mrs. Enriquez said she is not aware of RASMARK ever double invoicing, providing false invoices, or over billing. Mrs. Enriquez stated Ford's control over the payables and invoices would have precluded manipulation of the invoices by the carriers. Mrs. Enriquez said RASMARK's rates were always competitive with the other charter services including Aero Freight (Gail Beach). Mrs. Enriquez said the average charter with a carrier such as RASMARK cost approximately $2,000 to $3,000, and the idea that Andy Gantkessy was receiving kickbacks of $5,000 per charter from RASMARK is ridiculous. Mrs. Enriquez said her job required that she frequently work at night, including at RASMARK, and she never saw anyone with guns around the RASMARK planes or in the immediate vicinity.

59. In paragraph 115(see App. 943) of his affidavit, agent Frost discusses the Rasmussons use of the RASMARK jets for personal pleasure and the concept that it is prohibitively expensive compared to the cost of even first class travel. In my experience the personal use of

business assets is a civil tax issue, and would not even be considered as a potential criminal tax violation.

60. In paragraph 116 (see App. 943), agent Frost alleges three confidential sources told him Mark Rasmussons inheritance was depleted before he arrived in El Paso, and that his current lifestyle is supported by "unknown sources of income." This statement by agent Frost is another uncorroborated statement which is typical of those in his affidavit. The normal and responsible investigative procedure would have been to accurately document his inheritance, and to do a source and application of funds to determine if his inheritance and income justified his "current lifestyle." Agent Frost had IRS special agents available to the FTF who could have made this computation. As a matter of fact, RASMARK had net income in excess of $800,000 in 1991, before the USCS, agent Frost, and agents participating in the FTF invoked their vendetta to destroy his contractual relationship with Ford Motor. Agent Frost never made the information available to the court in his Affidavit for Search Warrant that RASMARK's net income was over $800,000 in 1991.

61. In paragraph 120 (see App. 944), agent Frost recaps information derived from DEA's interview with CPA Albert Apodaca. Albert Apodaca in a sworn affidavit told the DEA agents that he always knew Mark Rasmusson to be very honest, and that he was not aware of Mark Rasmusson being involved in any illegal activity [(attachment 27); see App. 335]. Neither DEA or the USCS had any use for that information, or the fact that an IRS audit of RASMARK in 1992, for the tax years 1989 and 1992, resulted in a "no change."

62. In paragraph 123 (see App. 945), agent Frost states "Based on the statements of Mr. Vargas and Mr. Gantkessy I believe there is probable cause to believe that RASMARK Jet Charter has 'double invoiced' flights for Ford Motor Company and bribed Mr. Gantkessy to cooperate in this scheme." In fact the USCS, agent Frost, agent Schroeder and other participants in the FTF totally misrepresented the statements of Mr. Vargas and Mr. Gantkessy.

63. In paragraph 124 (see App. 945), agent Frost states he

believes that based on the statement of Deborah Rasmusson and the association of the Rasmussons with known controlled substance traffickers such as Jesus Flores and Hector Barrera there is probable cause to believe that the Rasmussons have in the past and are utilizing RASMARK Jet Charter to facilitate the transportation and laundering of the proceeds in trafficking in controlled substances. Agent Frost's statement is a total misrepresentation of the facts. Mr. Rasmusson was acquitted of any alleged "criminal" association with Jesus Flores, and the USCS, agent Frost, agent Schroeder, and agent Mills never developed one piece of credible evidence that Mark Rasmusson knew or associated with Hector Barrera. Agent Frost's statement in paragraph 126 (see App. 946) that RASMARK was double invoicing for flights relating to Ford Motor Company is untrue. This statement was based on Mr. Vargas'interview. Mr. Vargas denied making the statements and indicated his actual statements had been misrepresented.

64. I have reviewed agents Frost's Affidavit for Search Warrant relating to 11157 Leo Collins, El Paso Texas and much of the supporting documentation. Agent Frost on behalf of himself, the USCS, and the FTF knowingly provided to the court in his affidavit numerous embellished statements, misrepresentations, and in some instances total fabrications. Agent Frost also withheld important facts that would have discredited his allegations thus making an impartial, objective evaluation of his affidavit by the United States magistrate impossible.

65. I have also reviewed agent Frost's Affidavit for Search Warrant relating to RASMARK Jet Charter, 6805 Boeing Drive, El Paso Texas dated November 19, 1993 [(attachment 38); see App. 912-947]. Because the statements in the affidavit duplicate that of the Leo Collins affidavit they will not be addressed, but my conclusions remain the same: agent Frost on behalf of himself the USCS, and the FTF knowingly provided to the court in his affidavit numerous embellished statements, misrepresentations, and in some instances total fabrications. Agent Frost also withheld important facts that would have discredited his allegations thus making an impartial objective evaluation of his affidavit by the United States magistrate impossible.

66. The actions of the USCS, agent Frost, and USCS

Management officials including Michael Wilczewski, Donald Reay, and Michael Lappe, and agents and other law enforcement officers of the FTF were not reasonable or objective relating to their incorporating false facts, fabrications, misrepresentations, and gross misstatements of fact in the FTF search warrants for the Deborah Rasmusson box of records; for the Rasmusson residence at 11157 Leo Collins, El Paso, Texas; and for RASMARK at 6805 Boeing Dr., El Paso, Texas.

67. Michael Wilczewski as the supervisor of the FTF had direct supervision of agent Frost and the FTF, and approved all of the USCS reports of investigation, relating to RASMARK, the Rasmussons and Andrew Gantkessy, which were entered in the USCS system of records. Donald Reay was Michael Wilczewski's immediate supervisor for much of the time RASMARK, the Rasmussons, and Andrew Gantkessy were being investigated. Michael Lappe was the El Paso Office special agent in charge and Donald Reay's supervisor. In their depositions Michael Wilczewski and Donald Reay both acknowledge being present when Deborah Rasmusson was brought into the USCS office on May 23, 1992, and provided alcohol by agent Frost [(attachments 39 & 40)] see App. 796-834 and App. 764-795]. Michael Wilczewski also reviewed agent Frosts Affidavit for Search Warrant (page 44) relating to the box of records, and should have known the information contained in it was bogus. Because Donald Reay was also present at the USCS office on May 23, 1992, he knew that the seizure of the box and subsequent related search warrant were bogus. In addition, SAC Michael Lappe was in charge of the El Paso office and had over all responsibility to ensure that information and evidence being developed by his agents and supervisors was obtained using constitutional methods and the investigation was conducted in a reasonable and objective manner in compliance with established constitutional law enforcement procedures. Mr. Lappe, Mr. Reay, and Mr. Wilczewski, each had the same responsibility as to the "Affidavits for Search Warrants" dated November 19, 1993 prepared by agent Frost, relating to RASMARK and the Rasmusson residence. Mr. Lappe, Mr. Reay, and Mr. Wilczewski as management officials had responsibility to ensure that the investigation of RASMARK, Mark Rasmusson, Deborah Rasmusson, and Andy Gantkessy was reasonable and

objective, and a legitimate activity. Mr. Lappe knew when he signed the letter to Ford Motor Company, dated July 26, 1993 [(attachment 2); see App. 1299], that the letter to Ford was not reasonable or objective and exceeded the constitutional boundaries of legitimate law enforcement purpose. Supervisor Michael Wilczewski also admitted he reviewed and approved the same letter.

68. I have reviewed all of the USCS reports of investigation, and all of the DEA Forms 6, which those agencies have provided. In addition, I have reviewed all of agents Frost's previously discussed "Affidavits for Search Warrants." I have also conducted numerous third party interviews and taken many sworn affidavits relating to this law suit. Based on my training and experience I have concluded the following: DEA, the USCS, and the USCS FTF participants have routinely embellished, misrepresented statements and made outright lies in their reports of witness interviews; the USCS and USCS FTF participants have routinely failed to obtain evidence and information that would have discredited the allegations of money laundering, kick backs, double invoicing, tax evasion, mail fraud, and transportation of controlled substances; in an effort to punish RASMARK, Mark Rasmusson, Deborah Rasmusson, and Andrew Gantkessy. The USCS and USCS FTF participants made a series of illegal disclosures of case related information, which was completely unfounded to Ford Motor Company causing Andrew Gantkessy to lose his job, and Mark Rasmusson, Deborah Rasmusson, and RASMARK to lose their contractual relationship with Ford Motor Company; that lookouts placed by the USCS, agent Frost, and the participants in the FTF, knowing the pilots would have to consent to a search because their cargo was time sensitive, caused RASMARK aircraft to be harassed and searched; and DEA, the USCS, agent Frost, and participants of the FTF conducted an unfounded investigation of RASMARK, the Rasmussons, and Andrew Gantkessy which has lasted for a period of years, when the normal procedures and guidelines would have called for stopping the investigation.

/s/ Edward H. Wagner

State of Texas
County of El Paso

Edward H. Wagner, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 3rd day of April, 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires on 5/5/99

[Paragraph numbers added to text]

AFFIDAVIT OF EDWARD H. WAGNER
MARCH 18, 1997

1. I, Edward H. Wagner, state that I was employed by the Department of Treasury, Internal Revenue Service (IRS), Criminal Investigation Division (CID), from November 1, 1973 until September 3, 1995 when I retired. I was a special agent/criminal investigator until October 1986 when I became a group supervisor for the El Paso office. I was a group supervisor until approximately the middle of 1990 when I was assigned on a detail to Operation Alliance. My experience includes my basic training as a special agent, annual training updates known as continuing professional education (CPE), and other specialized training relating to indirect methods of proof (utilized in income tax violations), training related to Title 31 violations and related forfeitures, and training related to Title 18 USC 1956 violations and forfeitures. Included in my basic training as a special agent I attended the Treasury Law Enforcement School, which is the basic school for all Department of Treasury special agents including the United States Customs Service (USCS).

2. I have also participated as both a special agent and group supervisor in many multi agency investigations which involved the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the USCS, the El Paso Police Department (EPPD), and the El Paso County Sheriff's Office (EPCSO). I was assigned to the DEA, Organized Crime Drug Enforcement Task Force (OCDETF), from 1982 until 1984. During that time I participated with the OCDETF Task Force on two separate major investigations and several smaller cases. While I was assigned to the DEA, OCDETF Task Force I participated in the drafting and execution of search warrants. I was also the contact agent for the primary undercover agent , who was an IRS special agent assigned to a long term DEA, OCDETF Task Force investigation. I know that as

a group supervisor I was required to conduct quarterly case reviews with the special agents in my group. I also know that my supervisor, an Assistant Chief (equivalent to a USCS Assistant Special Agent in Charge), conducted semi annual case related reviews, and that his supervisor the Chief of the Criminal Investigation Division (equivalent to the Special Agent in Charge for the USCS) was required to conduct annual reviews, which included cases. In addition, the Regional and National Offices were also required to do annual District reviews which normally included significant case activity. Among the items a management official of the IRS Criminal Investigation Division would look at in reviewing a cases are; the timelines involved in resolving the investigation, the progress being made toward meeting the investigative goals, and the quality of the evidence obtained. Both agents and managers are evaluated on how well the cases are being managed. The same case criteria is also employed by the Regional and National offices when conducting District reviews.

3. I was retained by Attorney Sandra Sheppard to assist in the law suit involving Mark Rasmusson, Deborah Rasmusson, Andrew Gantkessy, and RASMARK Jet Charter, Inc. on August 8, 1996. As part of my duties and responsibilities I reviewed all the USCS reports of investigation, all DEA Forms 6, agent and Lawrence Frost's affidavits for search warrants including: a search warrant dated May 26, 1992 relating to a cardboard file box; a search warrant dated November 19, 1993 relating to 11157 Leo Collins Drive, El Paso, Texas; and a search warrant dated November 19, 1993 relating to the offices of RASMARK Jet Charter, Inc., 6805 Boeing Drive, El Paso, Texas. The reference records were received pursuant to discovery relating to the lawsuit. I have also reviewed a photocopy of an affidavit, [(attachment 1); see App. 1292] by William Cole, dated July 10, 1992 (William Cole is the attorney for Lori Nelson, Mark Rasmusson's former wife), and three documents provided by Ford Motor Company to Andrew Gantkessy through the U.S. Equal Opportunity Commission including; a letter from the USCS dated July 26, 1993 to Ford Motor [(attachment 2); see App. 1299], a memorandum styled "Meeting with U.S. Customs "dated August 18, 1993 [(attachment 3); see App. 1304], and a memorandum styled

"Meeting with U.S. Customs and El Paso Police" dated September 24, 1993 [(Attachment 4); see App. 1305].

4. Through my experience and training, I know it is improper to disclose case related information to non law enforcement third party witnesses. When I attended the basic Dept. of Treasury special agent training school I was taught that it was improper and illegal to disclose case related material to a non law enforcement organization or person. An agent is authorized to make an investigative disclosure for the purpose of obtaining information relevant to his investigation. The standard is that an agent only disclose the minimum information necessary to obtain the information required. In an official Dept. of Treasury training document (See App. 1319), a student text states "Caution should also be exercised in your investigations to see that your disclosures are only for the purpose of obtaining information necessary to your case. You should not merely give information to the recipient or merely speculate or indulge in idle rumor or discuss the taxpayer's affairs. In the 1981 decision Jimmie D. and Cheryl Robers and Jim's Water Service, Inc. Larry R. Hyatt 697 F2d 899 (10th Cir), the jury found that Mr. Hyatt repeated rumors that went beyond the disclosures necessary to the investigation.

5. A final word on investigative disclosures involves the use by the recipient of any information you disclose in the course of your investigation. There is no restriction on further disclosure by the witness or recipient. This can have severe repercussions in sensitive cases. So remember to limit your investigative disclosures to the extent necessary to conduct a proper investigation."

6. Attachment 1 (see App. 1292) is the affidavit of William Cole, an attorney representing Lori Nelson, dated July10, 1992, regarding a child visitation matter. The affidavit states in part "there was an ongoing investigation of the Rasmussons by federal authorities concerning alleged criminal activities relating to criminal charges which had previously been dismissed. Mr. Frost stated that the charges had been dismissed during the trial because a witness

failed to appear and testify." The affidavit also states agent Frost made the following disclosures: "within the previous 30 days Debra Rasmusson had come into his office high on controlled substances and had admitted that she was addicted to controlled substances and had been for many years. She also told Mr. Frost that she was carrying a weapon because she thought her husband, Mark Rasmusson and his friends were trying to kill her because she was a security risk." Each of the referenced disclosures were made by agent Frost to Mr. Cole. There also is no evidence that a key witness failed to appear and testify. It should be noted there is no indication that agent Frost ever asked Mr. Cole for any information, or that he prepared a report relating to this contact.There is no investigative purpose to the disclosures. The disclosures made by agent Frost clearly exceed the Dept. of Treasury standard and were clearly made with a vindictive and malicious purpose to punish the Rasmussons because Deborah Rasmusson refused to sign a consent to search form for the offices of RASMARK when she was detained and interviewed on May 23, 1992.

7. Attachment 2 (see App. 1299) is a letter from the USCS dated July 26, 1993 to Ford Motor Company, signed by Special Agent in Charge Michael Lappe. In his sworn deposition agent Frost acknowledged that he wrote the letter. The disclosures contained in the letter far exceed the standard of "limit your investigative disclosures to the extent necessary to conduct a proper investigation [(attachment 5); see App. 1319]." The opening paragraph to the letter states "The United States Customs Service, Office of the Special Agent in Charge, El Paso, Texas is currently engaged in a conspiracy investigation of one of Ford Motor Company's contract carriers , Rasmark Jet Charter Inc. The investigation involves alleged violations of numerous federal statutes." What agent Frost then provided to Ford was a summary of his investigation as it related to the allegations against the Rasmussons, RASMARK, and Andrew Gantkessy. In fact, included in the letter is the following statement "The following is a brief synopsis of the evidence obtained thus far which indicates a conspiracy to commit fraud by Rasmark and Mr. Gantkessy." Included in the many outrageous disclosures are the following: "As of this date Special Agents have collected irrefutable

evidence that Mr. Gantkessy has in fact received several thousand dollars in free aircraft charters and cash payments from Deborah Rasmusson...Deborah Rasmusson offered him $5,000.00 per Ford charter which Mr. Gantkessy dispatched through Rasmark...Mr. Gantkessy stated that he was taken on a total of four trips to Las Vegas by the Rasmussons on Rasmark aircraft.. to the Super Bowl...All of these trips and attendant accommodations were at no cost to Mr. Gantkessy. Mr. Gantkessy stated that he was told by Deborah Rasmusson that if anyone should ever questioned his trips on Rasmark aircraft, he was to tell them that the trips were for charters for which he had paid Rasmark and she would provide false invoices to him for verification." There are other related disclosures to Ford in the letter. In my years as a special agent I have never provided any third party witness a "synopsis" of my evidence or told a non law enforcement person or entity that I had "irrefutable" evidence of a violation.

8. In his sworn declaration, agent Frost attempted to explain the Ford letter [(attachment 2); see App. 1299]. Agent Frost states the following: "I prepared for the signature of Special Agent in Charge Michael Lappe the letter sent to Ford Motor Company to assist that company in understanding the scope and nature of the ongoing investigation and what type of information was relevant to the subpoenas it had received. The letter was sent to the Staff Security Investigations section of the company for this limited law enforcement purpose. It is also noted that the information subpoena served on Ford Motor Company was of such a complexity that I decided to send Hector Barrera, a Customs Service Auditor, to Ford World Headquarters to assist in the search and retrieval process."

9. Agent Frost in his sworn deposition stated that his supervisor Michael Wilczewski reviewed the July 26, 1993 USCS letter to Ford Motor Company. In response to whether he normally provides synopsis of his investigations to parties other than law enforcement agencies agent Frost replied no. Agent Frost also stated that he never requested copies of the documents that were subpoenaed by the FBI from Ford Motor Company because they were seized under an administrative subpoena and he preferred not to go

that route.

10. FBI Special Agent Joe Acosta stated the FBI issued an administrative subpoena on Ford Corporation headquarters on January 28, 1993 to determine the volume of business that RASMARK was doing with Ford. Ford Motor Company provided the subpoenaed records two to three months after the subpoena was issued (not later than April 1993). Agent Acosta also stated he didn't think Frost had requested that the FBI issue the subpoena, but he told agent Frost it was something the FBI could do, and he (Frost) said fine. He personally received the records and briefly reviewed them. Agent Acosta said he made copies of the subpoenaed records which he provided to Customs.

11. Agent Frost's declaration that he forwarded the July 26, 1993 letter to Ford in part to assist them in understanding the nature of the ongoing investigation and the type of information that was relevant to the subpoenas it had received is inconsistent with FBI Special Agent Joe Acosta's deposition as it relates to the FBI administrative subpoena, because the FBI received the records months before agent Frost forwarded the July 26, 1993 letter. Because the records had already been received no additional explanation was necessary. As previously noted the July 26, 1993 USCS letter to Ford Motor Company far exceeds the investigative disclosure guidelines and is both vindictive and malicious in nature, and the USCS and Agent Frost knew that the letter would cause RASMARK to lose its contractual relationship with Ford Motor Company and would furthermore cause Andrew Gantkessy to lose his job with Ford.

12. Attachment 3 (see App. 1304) is a memorandum styled "Meeting with U.S. Customs" dated August 18, 1993 relating to a meeting between Agent Larry Frost, and Ford employees Phil Asiala and Tim Pomaville. The memorandum states the intent of the meeting was an opportunity for Mr. Frost to explain the position of U.S. Customs in this matter, as it relates to Andy Gantkessy and RASMARK Charters.

13. The memorandum also states the following: "Mr. Frost indicated that Gantkessy was deeply involved with the Rusmussons and Rasmark charters, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from Rasmark. He further explained that there are 11 full-time federal agents from other departments within the Federal Government that are assigned on a full time basis to investigating this case. Their investigation centers around drug trafficking over the border from Mexico to the United States. He indicated that he could not discuss the investigation, nor could he reveal any other details, however, he assured us that Mr. Gantkessy has become a part of the investigation." Information obtained during the recent depositions of the defendants clearly disputes there were 11 full-time federal agents from other departments. That statement by agent Frost to the Ford officials was for the sole purpose of impressing them with the magnitude of his investigation.

14. When questioned about his meeting with Pomaville and Asiala during his deposition, Frost made the following statements regarding his disclosures: "I can't say if that's factual or not. I don't recall." Also "I don't recall if I told them that. I had evidence of that." Frost also stated "I don't believe I did, no...It's possible that it was discussed, but I don't know how much detail they were provided with."

15. The memorandum does not reflect that agent Frost ever asked the Ford officials for any records or information. In addition, there is no indication that Agent Frost prepared a report of this contact with the Ford officials. Therefore there was no investigative purpose related to the contact. The referenced disclosures were vindictive and malicious as they related to the Rasmussons, RASMARK, and Andrew Gantkessy.

16. Attachment 4 (see App. 1305) is a memorandum styled "Meeting with U.S. Customs and El Paso Police" dated September 24, 1993. The memorandum relates to a meeting between USCS Agent Fred Schroeder and a member of the El Paso Police Department (Officer James Holland), and Ford Motor Company officials. The memorandum

contains numerous disclosures including the following: "speak with Hunter from the air charter service known as Kitty Hawk. He knows a lot about the activities of Rasmark and Andy Gantkessy. He knew a lot about Gantkessy's corrupt activity even though he may not be subject to criminal prosecution...however, that Andy will most likely have major problems with the IRS because it will be established that he has been receiving payoffs from Rasmark, and naturally, did not claim any of it. They describe Hunter as a willing participant who will quickly describe his knowledge of Gantkessy's cheating Ford out of large amounts of money and stating, 'don't worry about it'. In one of Mark Rasmusson's moments of anger over a pending divorce he made the statement to Hunter that Andy got paid of 'big time'." These disclosures were made by agent Schroeder to the Ford officials.

17. The memorandum further reflects the following disclosures by Agent Schroeder: "Schroeder also states that it is important for us to know that the second meeting that they had with Gantkessy was at the request of Gantkessy, and he volunteered all of the information. He was not asked, threatened, or coerced into saying anything, but came in voluntarily and admitted receiving marijuana from Debbie and $9,000 in cash, which did not include flights, gifts, lodging or any other costs of travel. He gave specific answers to questions and expounded on what he did. He stated that he knew he was violating Company rules. He said, 'I'll cooperate, just don't tell Ford. I'll lose too much. I'll wear a tape recorder if you want, but just don't tell Ford'.

18. It should be noted that he admits cheating on shipments by using more airplanes and other items to boost Rasmark profits.

20. THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CANNOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE IT'S A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR FALSIFYING INFORMATION TO THE

FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSY'S PARTICIPATION IN ACTIVITIES OF RASMARK."

20. The memorandum does not indicate that agent Schroeder or officer Holland ever sought to obtain any information or records from the Ford Motor Co. officials, therefore the disclosures had no investigative purpose and are improper. Even if agent Schroeder and officer Holland had requested information the disclosures far exceed the Dept. of Treasury standard and are both vindictive and malicious.

21. Agent Schroeder's disclosures are also inconsistent with his Report of Investigation relating to his interviews with Gantkessy on June 2 and June 3, 1993 [(attachment 6); see App. 1093]. Schroeder's report makes no mention that the second meeting with Gantkessy was at Gantkessy's request or that Gantkessy volunteered the information. In addition, his report makes no mention Gantkessy stated he knew he was violating company rules, or that he (Gantkessy) would cooperate and wear a tape recorder. I know an agent is required to document all pertinent facts provided by a witness. Andrew Gantkessy has denied the statements attributed to him. Gantkessy stated the statements were the agents' words, but because he was sick he finally told the agents, whatever you say or words to that affect. Andrew Gantkessy had previously suffered a stroke and had open heart surgery.

22. Included on all USCS Reports of Investigation is the following statement all in caps: **"OFFICIAL USE ONLY THIS DOCUMENT IS LOANED TO YOU FOR OFFICIAL USE ONLY AND REMAINS THE PROPERTY OF THE OF THE US CUSTOMS SERVICE. ANY FURTHER REQUEST FOR DISCLOSURE OF THIS DOCUMENT OR INFORMATION CONTAINED HEREIN SHOULD BE REFERENCED TO HEADQUARTERS, US CUSTOMS SERVICE TOGETHER WITH A COPY OF THE DOCUMENT** [(see Attachment 6); see App. 1093]." Of course this is the USCS standard when they disclose information to law enforcement agencies, the Department of Treasury standard for non law enforcement agencies and persons is even more

restrictive.

23. Having reviewed the referenced disclosures and related documents, and based on my experience and training, the disclosures made to Ford Motor Company in the letter dated July 26, 1993 [(attachment 2); see App. 1299], to the Ford officials during meetings on August 18, 1993 and September 24, 1993 [(attachments 3 and 4); see Apps. 1304-1305], and to William Cole [(attachment 1); see App. 1292] far exceed the normal procedures and policies of Federal Law Enforcement agencies. In addition, many of the disclosures by agent Frost and the USCS had no investigative purpose and were made with a vindictive and malicious purpose causing RASMARK to lose it's contractual relationship with Ford Motor Company, and Andrew Gantkessy to lose his job and a major portion of his retirement with Ford Motor Co.

/s/ Edward H. Wagner

State of Texas
County of El Paso

Edward H. Wagner, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 18th of March, 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires on: 5/5/99

AFFIDAVIT OF HENRY A. WEBB

APRIL 3, 1997

My name is Henry A. Webb. I am a citizen of the U.S and I reside in Canutillo, TX. This affidavit is being made at the request of Attorney Sandra Sheppard, Attorney for Mark Rasmusson, et al.

This affidavit will be a supplement to the affidavit previously submitted on 3-18-97 and is made part of this affidavit. The aforementioned affidavit listed my background, work history, and the basis for my qualification as a expert witness in the area of law enforcement investigations. (See attached affidavit, encl.#A for information in that area.)

The 3-18-97 affidavit primarily addresses the issue of privacy act violations and disclosures. That subject will not be readdressed in this affidavit.

Enclosures in this affidavit , after enclosure A,(see App. 1414) will begin with enclosure #13 (see App. 966) where the enclosures in enclosure A end with number #12 (see App. 1292).

The following acronyms are used through out this affidavit:

DEA- Drug Enforcement Administration
EPPD- El Paso Police Department
EPSO- El Paso Sheriff's Office
FBI- Federal Bureau of Investigation
FTF- Financial Task Force
IRS- Internal Revenue Service
L/O- Look out
SW- Search Warrant
USI&NS- United States Immigration & Naturalization Service
USCS- U.S. Customs Service

Although many actions of several defendants in this case are

subject to critical review, this affidavit will address only the following events or actions:

1. The procedure normally followed when a new criminal investigation is initiated, particularly when the investigating agency is a federal law enforcement agency.

2. The actions and misconduct of El Paso Police Officer George Salas.

3. The interviews of Andy Gantkessy and subsequent pressures to force him to become an informant for the USCS FTF.

4. The procedures for placing and utilizing "look outs" through the federal law enforcement agencies on the Mexican Border.

5. The surveillance procedures used by the USCS FTF during the extended surveillance of the Rasmark business on Boeing Dr.

6. Procedures followed by the USCS FTF members while conducting "trash pick-ups" at the Rasmusson residence on Leo Collins Dr and Dale Douglas.

7. The supervision issue throughout the entire Rasmark investigation.

8. The credibility issue:
   a. In reports
   b. In declarations and affidavits

Items 4 through 8 will be addressed using Agent Frost's affidavit for search warrant dated 11-19-93.

PROCEDURE NORMALLY FOLLOWED WHEN OPENING A NEW INVESTIGATION

Although there is no universally required procedure for actions

necessary in opening a new investigation, it is my opinion that at the very least, the following actions should be taken:

1. Review all available data bases , first through your own agency and then all other data bases available to you. Such reviews serve two purposes. First, they help assure that your investigation will not interfere with or jeopardize another investigation, possibly more important than your own, being conducted by some other agency or by your own agency in another area. There is also the safety factor of avoiding one agency unknowingly investigating another agency through parallel investigations, particularly important in undercover cases.

The second purpose is to offer other agencies an opportunity to assist you with information from their case files, if they so desire. Other agencies may have useful information which is not available through shared data bases. They may also offer to participate in your investigation by sharing manpower, informant information, or other resources.

In the Rasmark case, DEA had conducted a fairly extensive investigation of Mark Rasmusson during the Flores case. Agent Frost made no effort to meet with DEA Agents Lenox and Perkins to discuss their investigation of Mark Rasmusson. Had he done so, he would have learned that:

l. DEA did not consider Mark Rasmusson to be a "major player" in the Flores case. [(See enclosure #13); see App. 966-968].

2. Some of the DEA-6 reports prepared by Agent Perkins, i.e. the interviews of Pilot Jerry Burnett and CPA Albert Apodaca, contained information which was misleading or incorrect. Agent Frost later used these same DEA-6s and assumed that the information contained therein was accurate.

3. That DEA never developed any information that Rasmark planes were ever used to transport narcotics.

4. That DEA never developed any reliable evidence that Mark Rasmusson was involved in money laundering.

Agent Frost's reluctance to discuss his case with the DEA Agents Lenox and Perkins was at the very least shortsighted and unprofessional.

ACTIONS AND MISCONDUCT OF EPPD OFFICER GEORGE SALAS

[Paragraph numbers added to text]

1. In January, 1992, Officer Salas responded to a call regarding a death threat. Officer Salas states this was the first time he met Mr. or Mrs. Rasmusson. Mr. Rasmusson had received a death threat which was recorded on his answering machine. Mrs. Rasmusson gave the tape to Officer Salas who played the tape for his Lieutenant Jensen. Lt. Jensen kept the tape and advised that the death threat was serious and that Mr. and Mrs. Rasmusson required protection. However, no investigation was carried out by Officer Salas or supervisor Jensen to identify the caller. It should be noted that Jensen was previously a supervisor in the EPPD narcotics unit and in the multi county task force.

2. Although Officer Salas may have merely had a chance encounter with Mark and Deborah Rasmusson when he was dispatched to their office in regards to a threatening phone call in January, 1992, the facts in this case lead to a reasonable inference that the encounter was planned and carried out by the FTF.

3. Assuming that Mr. Salas was not aware of the investigation being conducted by USCS FTF, it may have been proper for him to offer his services as a private security guard to Mrs. Rasmusson. However, when he learned through an FBI Agent friend that the Rasmussons were the subjects of a federal criminal investigation, it was definitely improper for him to continue his employment with Mrs. Rasmusson. I am surprised that the EPPD allowed him to do so, if his superiors were properly advised of appropriate details.

4. The fact that Salas' remained in the employment of Mrs. Rasmusson under these circumstances; the fact that no follow up investigation was conducted as to the source of the death threat; and the inquiries by narcotics Sergeant McBain to Salas about the Mr. and Ms. Rasmussons indicates that EPPD supervisors were aware that the Rasmussons were investigative targets and authorized Salas to act as an undercover agent to obtain information on the Rasmussons for the FTF.

5. Not only did Salas accept money from Mrs. Rasmusson, $20 per hour, he continued to heighten her fears regarding her own safety. He made numerous unannounced , uninvited visits to the Rasmark business and to the Rasmusson residence. These visits and the opportunity afforded to spend time alone with Mrs. Rasmusson while on "protective assignments" eventually led to the sexual seduction of Mrs. Rasmusson by Officer Salas.

6. During the time Salas was accepting money for "protecting" Mrs. Rasmusson, he was furnishing information about the Rasmussons to Agent Frost. There is no question that Salas was acting in an undercover capacity and his activities were coordinated by Agent Frost, at the USCS FTF. I feel certain that neither the EPPD or any other law enforcement agency would allow one of their officers to perform body guard duties for anyone who was the subject of a major, task force investigation. Therefore, it is reasonable to conclude that EPPD supervisors were aware of the undercover work being carried out by Salas for the FTF and approved the work.

7. Officer Salas certainly violated the professional law enforcement code of ethics when he initiated the sexual affair with Mrs. Rasmusson.

8. If the EPPD allowed Salas to continue providing protection for Mrs. Rasmusson so that he could continue to provide information to the USCS FTF, then he, Salas, was actually acting as an "on duty"

police officer in an official undercover role. In the latter case, it would have been improper for him to receive payments from Mrs. Rasmusson, unless the money was turned over to the EPPD.

9. In either scenario, Officer Salas was functioning as an undercover agent for the USCS FTF and all his activities while in that role should fall into the "official duty" category. His conduct with Mrs. Rasmusson was highly unethical and unprofessional.

10. Officer Salas used his position of trust with Mrs. Rasmusson to direct her to Agent Frost and other USCS agents on 5-23-92 with a box of Rasmark business records. Through Salas' cooperation with Agent Frost, Mrs. Rasmusson was interviewed for several hours at the USCS office on Viscount. During the lengthy interview, Mrs. Rasmusson was provided a six-pack of beer by one of the USCS agents. See pages 16-17 below for details regarding the interrogation of Mrs. Rasmusson at the USCS office.

11. It is clear from the actions of Officer Salas as related to Mrs. Rasmusson were coordinated through Agent Frost. There are some serious questions raised regarding what other actions Salas took while in the Rasmusson residence and some indication what [sic] he may have obtained keys to the Rasmusson residence and the Rasmark office.

THE INTERVIEWS OF ANDY GANTKESSY AND SUBSEQUENT EFFORTS TO FORCE HIM TO BECOME AN INFORMANT FOR THE USCS FTF.

12. Andy Gantkessy had been a Ford Motor Co. employee for over 24 years by October 1993. From 1984 to 1993, he received ratings of excellent or excellent plus. [(See enclosure 14); see App. 1302].

13. On June 2, 1993, Mr. Gantkessy was surprised at his office in the Ford-Favesa building by Agents Larry Frost, Fred Schroeder, Larry Brown, FBI Agent Joe Acosta, and EPPD Detective James Holland. Mr. Gantkessy, a recovering stroke victim and heart patient, [App. 1420 omitted]

was confronted in a very aggressive manner by the officers.

14. According to Mr. Gantkessy, he was threatened with immediate arrest if he refused to talk to the agents or if he insisted on calling a lawyer. He was told by the agents that they had been following him and knew every move he made, including where and when he went to the bathroom. Mr. Gantkessy stated that the agents questioned him very aggressively for several minutes making numerous threats to arrest him or have him fired by Ford.

15. After several minutes of intense interrogation and badgering by the agents, Mr. Gantkessy finally caved in and said. "OK, anything you say". In so doing, he admitted to all the allegations of which the agents were accusing him. One of the allegations was that Deborah Rasmusson paid him $5,000.00 per flight for each Ford flight booked through Rasmark. He stated that this statement could not have been true since most of the Rasmark charters only cost between $2,000.00 and $3,000.00. The $5,000.00 figure was furnished by Agent Frost and is ridiculous on it's face.

16. Mr. Gantkessy stated that when he admitted all the allegations "thrown at him" by the agents, they agreed to allow him to leave the room. He stated he was extremely nervous and felt that he might have another heart attack. Mr. Gantkessy's condition after the interview was confirmed by Ford employee, Beverly Enriquez, who was concerned about his health. Mr. Gantkessy went directly home after the interview and his wife made an appointment for him so see his Doctor either that afternoon or early the following morning.

17. Prior to being allowed to leave the room after the June 2, 1993, interrogation, Mr. Gantkessy was told to report to the USCS office on Viscount the following day, June 3rd, for another interview. He was threatened with arrest if he failed to appear on June 3rd.

18. The following day, June 3, 1993, Mr. Gantkessy was interrogated by USCS Agent Fred Schroeder and FBI Agent Joe Acosta. Mr. Gantkessy stated that Agent Schroeder controlled the interrogation

and asked most of the questions. Most of the questions were directed at the activities of the Rasmussons and the Rasmark business. Agent Schroeder also asked Mr. Gantkessy if he would be willing to wear a "wire" and record conversations with the Rasmussons. Mr. Gantkessy told the agents that he would think about wearing the " wire" and that he would give them his answer the following day.

19. Agent Schroeder also asked Mr. Gantkessy to make a call from Schroeder's office to Mark Rasmusson and allow Schroeder to record the conversation. Agent Schroeder even told Mr. Gantkessy that he, Schroeder, would tell Mr. Gantkessy what to say. Mr. Gantkessy declined to make the call.

20. Prior to being allowed to leave the USCS office, Mr. Gantkessy was threatened again by Agent Schroeder. Those threats included arrest and losing his job with Ford. Agent Schroeder assured Mr. Gantkessy that if he "cooperated" nothing would happen to him.

21. The following day Mr. Gantkessy visited two El Paso lawyers, Mr. Tony Silva and Mr. Bernard Panetta and told them of the threats made by Agent Schroeder. Both advised Mr. Gantkessy not only to refuse to record any conversations but also to refuse to cooperate with any of the agents in any manner. When Mr. Gantkessy phoned Agent Schroeder and told him that he, Gantkessy, would not "cooperate" with the FTF, Agent Schroeder allegedly told Gantkessy that the agents would start "playing hardball".

22. There is a direct conflict between the testimony offered by Mr. Gantkessy and that of the agents involved in the June 2nd and June 3rd interviews with him. There is also a serious conflict between the testimony offered by FBI Agent Acosta and the other agents, particularly the USCS Agents Frost and Schroeder.

23. Agent Frost alleges that no threats were made against Mr. Gantkessy during the June 2 interview. When asked why five agents were allowed to be present during the interview, Agent Frost stated that he, Frost and Agent Acosta went to Gantkessy's office to do the interview. "When we,(Frost and Acosta) started to go into the building,

we just--all of a sudden, everybody else was there, too . And that's the way that occurred."[(See encl #15, pgs 115-116); see App. 453, pgs 115 -116).

24. FBI Agent Acosta stated in his declaration of 7-31-96 that 6 or 7 members of the task force conducted the June 2nd interview with Mr. Gantkessy. He stated "There were more officers present than would usually be necessary to conduct an interview because the members represented various agencies with different, individual interests in potential money laundering violations."[(See encl #16, Pg 3); see App. 1028, para 11].

25. Neither explanation offered by Agents Frost or Acosta are adequate. In all my professional law enforcement career, I never participated in such an interview with more than three officers present. The "normal rule' used by the FBI and most other law enforcement is to use no more investigators than is absolutely necessary. Two investigators is the generally accepted number. The presence of five agents is, in itself, intimidating and should cast doubt on the admissibility of any confession or admission obtained under such conditions. There was no valid law enforcement purpose for having so many agents present during the interview.

26. Agent Frost stated that the agents simply followed him , Frost, into the room. Agent Frost was the senior agent on the scene. He should have selected one other agent to assist him with the interview and ordered the other agents to remain outside the building. Agent Acosta's explanation that the other agents from other agencies had an interest in the case and were there for that reason is also flawed. There were three agents present from USCS, Agents Frost, Schroeder, and Brown. Certainly USCS needed no more than one agent in the interview. Detective Holland from the EPPD likewise had no reason to participate in the interview.

27. Agent Frost stated that his original intent was for the interview to be conducted by Frost and FBI Agent Acosta. Testimony during depositions with defendants, Schroeder, Frost, Acosta, and Holland indicates that only Agent Schroeder took notes during the

interview and that most of the questions were asked by Agent Frost. There was no reason for five or more agents confronting Mr. Gantkessy other than to inflict shock. It is reasonable to infer that the purpose of having five or seven agents confront Mr. Gantkessy was to keep Mr. Gantkessy off balance, threaten, interrogate, intimidate and coerce Mr. Gantkessy into admitting exactly what the FTF agents wanted Mr. Gantkessy to say about the Rasmussons.

28. Agents Frost and Schroeder stated in depositions the interrogation of Mr. Gantkessy lasted only a few minutes, possible 15 minutes of [sic] less. Agent Acosta stated that the interrogation lasted between 30 and 45 minutes. [(See enclosure #17, pg 57); see App. 691] Agent Schroeder made a written report of the June 2, 1993 interview. [(See encl #1); see App. 1093].

29. Agent Schroeder's account of the June 2 interrogation is only six lines long. [(See pd 2 of encl #1); see App. 1094]. No mention is made by Agent Schroeder of any attempt to secure Mr. Gantkessy's cooperation. Certainly in a 30 to 45 minute interview, the contents of the interview would require more than six lines to report. Based upon Mr. Gantkessy's statement that the agents told him that they had been following him and the agents' admissions that they had in fact followed him, and the FTF agents lack of veracity and conflicting testimony, I believe Mr. Gantkessy's version of the facts.

30. Although Agents Frost and Acosta have stated in their depositions that they suspected that Mr. Gantkessy might have been involved in "kick-back" violations with Rasmark, it appears there was never any intent of the FTF agents to seriously investigate those allegations. USCS has no jurisdiction over "kick-back" statutes. FBI Agent Acosta, whose agency does have such jurisdiction, stated that he did not conduct any follow up investigation based upon the "kick-back" admissions made by Mr. Gantkessy during the June 2-3 interviews. It is noted that those Ford employees at El Paso who would have been key witnesses in any such investigation, namely Beverly Enriquez and Manuela Barron, were never interviewed by any agent from the FTF.

31. Agent Schroeder stated in his deposition that Mr. Gantkessy volunteered to come to the USCS office on June 3rd for the second interview. Agent Schroeder even told Ford officials that Mr. Gantkessy "asked to come to the USCS" for the June 3rd interview.(See encl #3); see App. 1305].

32. Agent Schroeder's testimony is directly contradicted by that of FBI Agent Acosta who stated that either he, Acosta, or Schroeder phoned Mr. Gantkessy and asked him to come to the USCS office for the June 3rd interview.(See encl #17, pg 57); App. 691]. Agent Acosta also stated in his deposition that during the interview on June 2, Mr. Gantkessy was asked to "assist" the task force. [(See encl #18, pgs. 51-52); see App. 682]. Agent Acosta also stated that in the June 3rd interview Mr. Gantkessy was asked "if he wanted to cooperate",(See encl #2, pg. 58); see App. 693]. Gantkessy replied that he would be willing to "do whatever he could".

33. It is noteworthy that Mr. Gantkessy was never advised of his rights or told that he did not have to talk to the agents. He had been under surveillance for at least two days and had become the focus of attention of the FTF. Since there was little or no effort to conduct any investigation of the "kick-back" statute violations the only other interest the FTF had in Mr. Gantkessy must have been to develop him as an informant. A majority of the testimony leads to that conclusion. Mr. Gantkessy's claim that Agent Schroeder asked him to wear a "wire" is certainly more credible than Agent Schroeder's denial of same. Mr. Gantkessy's statement that he discussed the request with two lawyers, Mr. Silva and Panetta, before making his decision not to comply with Agent Schroeder's requests, certainly lends further credibility to Mr. Gantkessy's version of the facts.

34. Agent Acosta stated that he, Acosta, prepared his own written reports of the June 2-3 interviews with Mr. Gantkessy and submitted them to his FBI supervisor. Although these reports have not been made available to the plaintiffs, I believe that Agent Acosta's reports will cast more doubt on the veracity of both Agents Frost and Schroeder.

35. Since the disclosure and privacy issue is discussed in detail in the attached affidavit,(Encl A), it will not be addressed here. Suffice to say, there was absolutely no legitimate purpose for the release of extensive case information to Ford Motor Co. by Agents Frost, Schroeder, and SAC Lappe. The facts indicate that their intent was to punish Mr. Gantkessy for his refusal to "cooperate" and to sever the business connection between Ford and Rasmark. Agent Frost's arguments to the contrary are simply invalid and are contradicted by the testimony of Agent Acosta and other witnesses.

THE 'LOOKOUT' ISSUE

36. I have placed "lookouts", (L/O) on many occasions with USI&NS, US Border Patrol, and the USCS. I placed L/Os as an FBI Agent working border cases and as a Drug Task Force supervisor in a multi-county drug task force. I am aware from my experience that there are various types of L/Os. The lowest level is a "silent hit". This simply allows the person or vehicle to pass but the person placing the L/O is notified of the details, date, and time of the entry at a POE or passing through a BP inspection check point.

37. The next level would be to search the vehicle or person in a "routine "manner but not indicate that they were the object of a L/O. The next higher level would be an extensive search of both the person and conveyance. A L/O may also be placed to arrest an individual or to seize a conveyance.

38. In every L/O I have ever placed, I have been required to give my name, title, and a phone number where I could be reached on a 24 hour basis. There is usually a time frame placed on every L/O. The time may range from a few hours up to 30 days. When I placed long term L/Os, I was asked to renew them on a 30 day basis.

39. Based upon the frequent searches conducted on the Rasmark planes and the manner in which the searches were conducted, I believe that there was an extended period , possibly 1988 to 1994, when Rasmark planes were the subjects of L/Os, probably placed by

USCS agents in El Paso.

40. Some of the more obvious cases are: The Brownsville search on 10-6-88. Pilot Jerry Burnett and the crew were accosted at gunpoint by a group of Border Patrol agents who stated they were acting under authority of US Customs. Pilot Burnett and the crew were held at gunpoint while the plane was searched thoroughly. This, despite the fact that the flight was a domestic flight and had not been outside the U.S.

41. As a former Border Patrol Agent, I would never have conducted such an aggressive search without specific L/O information indicating that the plane would probably contain drugs and that the crew might be armed. It is my expert opinion that this was a L/O search probably placed by USCS personnel in El Paso.

42. Another such search was conducted of a Rasmark plane, crew, and passengers at Vancouver, BC, Canada in 1990 or 1991.(See encl #19); see App. 368]. Mr. Yaber [sic] stated that the pilot, crew and passengers were strip searched by Canadian officers who kept asking, "Where are the drugs?"

43. I lived in Montana on the U.S. Canadian border from 1971 to 1978. During that time I had liaison duties with the Canadian Provinces of Alberta and Saskatchewan and I crossed the Canadian border on a regular basis. My wife was born in Canada and we have traveled there to visit her family regularly since 1960. The actions of the Canadian officers were not normal actions taken by Canadian officers in a routine Customs inspection. It is my expert opinion that the Canadian officers search was based on a L/O placed by an American federal law enforcement agency, most likely USCS El Paso.

44. On 6-16-93 a Rasmark plane landed at Dallas Love Field to refuel. The plane was immediately surrounded by armed officers from the Dallas PD and USCS. [(See encl #20); see App. 350]. The pilot, Mr. Jackson, and crew were removed from the plane at gunpoint and handcuffed. Mr. Jackson was forced to sign a consent search form for the plane or remain overnight while a search warrant was obtained

the following day. A search of the plane by the agents using a "drug dog" revealed absolutely nothing illegal.

45. During the above search., Mr. Bertilsson, the co-pilot was handcuffed and held at gunpoint. When the pilot and crew were released , one of the agents remarked that the plane had been searched because the agents received information that "the plane needed searching". The agent also stated that "Rasmark was on a hit list".

46. There is no doubt in my mind that this search was another L/O based search. Since the flight had not been outside the U.S. and was purely a domestic flight, the L/O information must have been conveyed to the Dallas agents on the date of the search. Otherwise, they would not have been ready and organized to perform the search.

47. ON [sic] 11-10-92 Deborah Rasmusson and a Rasmark employee, Blanca Avelar, were returning to El Paso from Juarez. When they arrived at the POE Ysleta, their vehicle was referred to secondary and searched thoroughly. The officers claimed that they found 1/10 gram of marijuana and a switch blade knife in the vehicle. Both Mrs. Rasmusson and Ms Avelar were handcuffed, strip searched, and detained at the POE.

48. USCS Agent Frost was notified of the incident and he immediately responded to the POE accompanied buy USCS Agent Eric Mills. The fact that the USCS Inspector notified Agent Frost of the search and detention indicates to me that the search was based on a L/O and the person placing that L/O was Agent Frost.

49. Agents Frost and Mills attempted to interview Mrs. Rasmusson and Ms. Avelar, although neither of them were advised of their Miranda rights. When Mrs. Rasmusson refused to "cooperate" with Agent Frost, the EPPD was notified and two EPPD officers came to the POE and arrested both women. Ms. Avelar was arrested on outstanding traffic warrants and Mrs. Rasmusson was arrested for possession of a prohibited weapon, a switchblade knife , a misdemeanor offense. Mrs. Rasmusson was transported to the EPPD East Valley Station where she was strip searched again, detained for several hours,

and finally released after being issued a misdemeanor summons.

50. Based upon my experience as an FBI Agent working border cases and my experience as a drug task force supervisor in El Paso, I know that, barring unusual circumstances, persons are not arrested for possession of 1/10 gram of marijuana or a switchblade knife. I have witnessed many occasions at the Ports of Entry where individuals returning from Mexico have been in possession of switchblade knives. The Inspector simply seized the knife, broke off the blade and tossed the pieces into the trash can.

51. I have never heard of a case where anyone has been arrested for possession of 1/10 gram of marijuana. The amount is so small that testing it in a chemical test kit would destroy the sample. I'm not sure that any test kit would test such a small sample.

52. As a drug task force supervisor in El Paso, I have received numerous calls from USCS officers at the POEs asking me to accept cases which involved small amounts of controlled substances, particularly marijuana. Sometimes the amounts were ounces , sometimes even two or three pounds. I declined those cases on a regular basis. In view of the fact that the El Paso County DA refused to prosecute Mrs. Rasmusson for either the switchblade knife or the 1/10 gram of marijuana, I feel that the arrests made by the EPPD were made at the request of USCS, probably Agent Frost, and that they were made for harassment only. Since Agent Frost was notified of the search and detention of Mrs. Rasmusson and he responded quickly to interview her, it is obvious to me that he was the person who placed the L/O.

53. My opinions regarding the switchblade knife and the 1/10 gram of marijuana are consistent with the opinions expressed by retired USCS Supervisor /Agent Mark Ryden in his affidavit dated 3-3-97. [(See encl #21); see App. 1466].

54. There are several other incidents where passengers and crew members were strip searched, but it would be voluminous to detail all these other incidents. I believe that the above documented incidents are sufficient to establish a pattern of conduct aimed at the Rasmussons

and Rasmark.

55. From my experience working on the both the Canadian-U.S. and Mexico-U.S. Borders I know that "strip searches" are not conducted by USCS or USI&NS Inspectors unless there is some strong reason to do so. I.e. either a L/O or a very strong suspicion the individual is carrying drugs or contraband on their person.

56. My opinions on this subject are consistent with the expert opinion of Mark Ryden, a retired USCS Supervisor/Agent. [(See enclosure #21); see App. 1466].

57. The next portion of this affidavit will address Agent Frost's affidavit for search warrant signed on 11-19-93 [(See encl #22); see App. 912-947] and through which he obtained a federal search warrant for the Rasmusson residence at 11157 Leo Collins, El Paso, TX.

58. During the past several months I have reviewed hundreds of pages of USCS reports, DEA reports, EPPD reports as well as declarations and depositions of witnesses and several defendants in this case. I believe that Agent Frost's affidavit of 11-19-93 brings together in one document most of the critical law enforcement issues related to this civil suit.

59. On pg 2, para 4, encl 22 (see App. 912, para 8), of his affidavit, Agent Frost stated that "The portion of this investigation which related to Mark Rasmusson and Rasmark was predicated on facts which indicated that Mark and Debra Rasmusson had provided transportation of controlled substances, currency, and people in their aircraft in furtherance of the controlled substance conspiracy carried on by the Jesus Flores Organization."

60. The above statement is false and is not supported by any evidence. DEA Agent Tom Lenox who was a case agent in the Flores case testified in deposition that the DEA investigation failed to reveal any evidence that Mark Rasmusson was transporting drugs on any of his aircraft. [(See encl 23, pg 15, lines 23-25 and pg 16, lines 1-2); see App. 461].

61. It is noted that Agent Frost failed to contact either DEA Agents Lenox or Perkins during the USCS FTF investigation. Had Frost contacted either of the DEA Agents, they would have told him that they never considered Mark Rasmusson a "major player" in the Flores case. [(See encl 13); see App. 996].

62. On pg 5, para 2, Encl #22 (see App. 917, para 18), Agent Frost stated , "Mark and Debra Rasmusson and Jerry Burnett concluded that , "Flores was in the illegal drug business'. Burnett reportedly told Special Agent Perkins that during 1990 he (Burnett) had several conversations with the Rasmussons regarding Flores and "his people" being in the drug business and that both Mark and Debra Rasmusson told him, (Burnett) that they knew that Flores was in the drug business."

63. Agent Frost continues by stating that during the Flores trial, Mr. Burnett denied that he ,(Burnett)ever stated to Mark Rasmusson that Jesus Flores was involved in illegal activities. Burnett also denied that Mark Rasmusson ever remarked to him,(Burnett) that Jesus Flores was engaged in any illegal activity.

64. The fact that Agent Frost used the above information, knowing that Mr. Burnett had been misquoted by DEA Agent Perkins indicates that Agent Frost has little regard for the truth. The fact that Mr. Burnett was a government witness during the Flores-Rasmusson trial and his testimony was not disputed or impeached by the attorney for the government indicates to me that Mr. Burnett was, in fact, misquoted by DEA Agent Perkins.

65. Again, if Agent Frost had interviewed Agent Perkins at the outset of the USCS Rasmark investigation, Frost would have known the information Frost used from the DEA-6 reporting the interview of Mr. Burnett was false and misleading.

66. On pg 6 of encl 22 (see App. 918, para 21), Agent Frost stated that "During the course of this interview, a DEA interview with Albert Apodaca, a CPA handling Rasmark accounting matters, Mr. Apodaca and Mr. Jensen told SA Perkins that on the afternoon of 8-27-90 Mark Rasmusson came to the office of Apodaca and Jensen and

stated that he wished to amend his May, 1990 financial report to include an $11,000.00 cash transaction.

67. Mr. Apodaca stated in an affidavit dated 9-24-96 that he never made the above statement to Agent Perkins.[(See encl #24); see App. 335]. Mr. Apodaca stated that he told the agents that the money was from several cash transactions. Mr. Apodaca stated ,"Mr. Rasmusson did not ask me if he should match the invoices to the amounts the government agents knew about ",as indicated in the DEA-6.

68. Mr. Apodaca stated he did not tell the DEA agents that he was alarmed by Mark Rasmusson's actions. He told them that he was alarmed by the agents contacting him, Apodaca. Mr. Apodaca continues by stating that he told the agents that he had always known Mark Rasmusson to be very honest and was not aware of him, (Mr. Rasmusson) ever being involved in any illegal activity. This comment about the honesty of Mr. Rasmusson was never included in any of the DEA reports of the interview with Mr. Apodaca.

69. Agent Frost implies in his affidavit, Encl 22 (see App. 918, para 21), that Mr. Apodaca suspected that Mark Rasmusson was involved in tax violations. Mr. Apodaca clearly denies that allegation. Again, had Agent Frost bothered to talk to the DEA agents, he, Frost, would have known that he was using false and misleading information in a sworn affidavit.

70. Mr. Apodaca stated that he was never told by Mark Rasmusson that Rasmark did not accept cash. He also stated that it was his, Apodaca's, own attorney who told him to require a DEA subpoena before releasing any Rasmark records. Mr. Apodaca stated he was not shown a copy of the DEA-6 regarding his statements to Agent Perkins until just before the Flores-Rasmusson trial. When he read the statements, he told Agent Perkins that some of the information in the DEA-6 attributed to him, Apodaca, was false.

71. Agent Frost states on pg 7, para 5, encl 22 (see App. 920, paras 25,26), that an FBI source stated in a June, 1993 report that "Mark Rasmusson became involved in money laundering with Flores. The

same source further stated that Mark Rasmusson was buying aircraft parts with the proceeds of trafficking in controlled substances." Frost testified that he reviewed the documents in the Rasmusson's divorce case. Then Frost knew or should have known that between October 22, 1993 and the final divorce decree in June, 1996, the divorce court had a "special master" that controlled the cash flow of Rasmark Jet Charter, Inc., and no possibility of money laundering through the device of buying and selling aircraft parts was even remotely possible.

72. By November, 1993, the date of Agent Frost's affidavit, Agent Frost and the FTF had been investigating Mark Rasmusson and Rasmark for almost two years. Agent Frost had access to Mr. Rasmusson's personal and business IRS tax returns, personal banking records, and other financial records available through the federal grand jury. During my review of USCS and DEA reports and the declarations and depositions of many other witnesses in this case, there was no evidence developed to verify any of the above information used by Agent Frost.

73. Agent Frost was never able to show that Mr. Rasmusson was buying more aircraft parts than he actually needed for Rasmark. None of the information furnished by the FBI source in June, 1993 had been verified or corroborated by November, 1993, a period of several months. The use of this uncorroborated information appears to be another example of Agent Frost attempting to embellish and mislead the US Magistrate.

74. On pg 7, para 6, encl 22 (see App. 921, para 27), Agent Frost states that "He/she had personal knowledge that in the past Mark Rasmusson would travel throughout the U.S. in his aircraft and collect proceeds of trafficking in controlled substances and deliver the proceeds to the interior of the Republic of Mexico."

75. Again, this information was received in June, 1993 and as of November, 1993, none of the information had been corroborated in any way. During the several years when Mr. Rasmusson and Rasmark were under intense investigation by DEA, FBI, and USCS, no regular associations, either business or social, were ever documented between

Mr. Rasmusson and any known Mexican drug traffickers, other than his business relationship with Jesus Flores. It was never established that Mr. Rasmusson's relationship with Mr. Flores was anything other than legitimate.

76. Agent Frost had access to extensive USCS and FAA records relating to the frequency and destination of all Rasmark flights to Mexico and throughout the U.S. He should have known through these records that the information furnished by the FBI source was unreliable.

77. On pg 8, encl #22 (see App. 921, para 29), Agent Frost states that the FBI source stated , "Mark Rasmusson received approximately $500,000.00 in controlled substance proceeds from Jesus Flores during 1989-1990. The majority of the money received from Flores was used to purchase aircraft parts, aircraft engines, and pay expenses incurred during his, Mr. Rasmusson's, money laundering activities."

78. Agent Frost should have known that the IRS did a detailed audit of Rasmark for the years 1989-1990. There is a strong probability that the audit was requested by the FTF or the FBI based upon this allegation. The result of the IRS audit was a "no change", meaning that there were no violations of any sort. [(See encl #25); see App. 1290-91]. It would have been virtually impossible for a small business the size of Rasmusson's to hide $500,00.00 in aircraft parts expenses.

79. The DEA investigation of the Flores organization revealed only very limited contact between the Rasmussons and Mr. Flores. There was no reason why Mr. Flores would have given Mr. Rasmusson $500,000.00 to launder. The FBI informant information received in June, 1993, had not been validated through any investigative evidence when Agent Frost used it in his affidavit in November, 1993. Again, I believe that Agent Frost was deliberately including uncorroborated and misleading information in his affidavit.

80. On pg 8, para 4, encl #22 (see App. 922, para 31), Agent frost states that an FBI source, called FBI-1, advised that during

December, 1991, that he/she was in the Rasmusson residence at 11157 Leo Collins, El Paso, TX. FBI-1 allegedly saw a large suitcase in Deborah Rasmusson's bedroom. The suitcase contained what appeared to be controlled substance and currency. The testimony of FBI Agent Acosta indicates that the FBI took no immediate action to seize the alleged drugs or money. It is not known whether FBI-1 furnished the information to the FBI on a timely basis. It is known that the FBI was never able to corroborate the information.

81. Agent, Frost used the uncorroborated and "dated" information in his affidavit and failed to identify it as such. This appears to be another attempt by Agent Frost to embellish and mislead .

82. FBI-1 also stated that he/she saw storage boxes under Deborah Rasmusson's bed containing Rasmusson's business records. One of the boxes contained bank statements from banks in Colorado, Alaska, Cabo San Lucas, Mexico, New York, and the Cayman Islands. During the many months of the investigation conducted by the FTF, no extensive bank records were ever located which indicated that Mark Rasmusson had any major bank accounts outside the U.S. Mr. Rasmusson owned a resort home in Cabo San Lucas, Mexico. He maintained a small banking account there to pay bills related to the maintenance and upkeep of that residence.

83. The information regarding the actions of EPPD Officer George Salas contained on pg 9, encl 22 (see App. 923, paras 35-41), has been discussed earlier in this affidavit. Suffice to say that Officer Salas' actions were a discredit to himself, the EPPD, and to all professional law enforcement officers.

84. During the 5-23-93 interview with Deborah Rasmusson conducted by Agent Frost and other USCS agents at the USCS office, Agent Frost allowed another USCS agent to purchase a six pack of beer and furnish it to Mrs. Rasmusson while the interview was ongoing. Agent Frost told Mr. William Cole, a Nevada attorney for Mr. Rasmusson's ex-wife, that he , Frost , had seen Deborah Rasmusson, "high on drugs" while she was in Frost's office.[(See encl #12); see App. 1292]. Since Mrs. Rasmusson stated she was only in Frost's office

on one occasion, that being during the 5-23-93 interview, Agent Frost must have believed that Mrs. Rasmusson was "high on drugs" during that several hour interview. He added to that "high" by furnishing her a six pack of beer which she stated she consumed in the USCS office during the 4-5 hour interrogation.

85. On pg 9, para 6, encl #22 (see App. 923, para 38), Agent Frost states that "During several hours of conversation with Debra Rasmusson, she stated to me that Mark Rasmusson ships approximately 1,000 lbs. of U.S. currency out of the U.S. twice a week on behalf of his criminal associates. She further stated that this currency is transported by aircraft belonging to Rasmusson's Jet Charter, Inc.".

86. The above statement is ridiculous on it's face. That amount of currency ,2,000 lbs per week, would represent billions of dollars per month. Given that the information was received from a person whom Agent Frost himself described as "high on drugs' and someone who just drank a six pack of beer furnished by the USCS during a multi-hour interview, it is clear to me that Agent Frost has absolutely no regard for the truth and he considers a statement made under oath as something to be taken lightly.

87. The U.S. Magistrate should certainly have been advised that the above information was received from a person "high on drugs" and probably intoxicated. No qualification of any sort was placed on the information when Agent Frost used it in his affidavit.

88. During the 4 or 5 hour interrogation of Mrs. Rasmusson on 5-23-93, Agent Frost attempted to persuade her to sign a consent to search form and stated the Rasmark assets would be subject to forfeiture. This effort was made despite the fact Agent Frost himself described her as "high on drugs and knowing that she had consumed a six pack of beer during the interview.

89. Not only does Agent Frost's actions demonstrate a blatant disregard for his own agency's rules regarding providing liquor to witnesses being interviewed inside a government office, he has less

regard for the rights of a citizen. How could any consent to search form obtained under such conditions be valid unless all agent personnel involved lied during any subsequent inquiry and participated in a "cover-up". I believe that this has happened in this case.

90. Once Mrs. Rasmusson realized that USCS intended to seize all the assets of Rasmusson's, she refused to cooperate any further and she left the USCS office. When she arrived at the USCS office, Mrs. Rasmusson was in possession of a box of Rasmusson's business records. When she left the building carrying the box of records, Agent Frost and other USCS agents followed her to a nearby convenience store where Agent Frost seized the box of records as "evidence".

91. Agent Frost obtained a search warrant for the box on 5-26-92 and he opened the box and examined the contents on 5-27-92. The inventory of the box was witnessed by FBI Agent Acosta. Agent Frost states on pg 10, para 6, encl #22 (see App. 924, para 44), that "The contents of the box upon analysis indicated that the Rasmussons are engaged in tax evasion."

92. This statement made under oath by Agent Frost can only be described as a blatant lie. IRS Agent Fonda Hivick, a CPA and IRS tax expert, testified that she examined the contents of the box. She stated that the box contained normal business records and personal papers. She stated there was nothing in the box that led her, Hivick, to believe there was any prosecutive potential for Mark Rasmusson under IRS investigating authority. [(See encl #26, pgs 28-29); see App. 524].

93. Agent Frost testified that he had not been trained to review documents related to tax evasion. [(See encl #27, pg 18); see App. 371]. Prior to making the statement about the Rasmusson's involvement in tax evasion in his November 1993 affidavit, must have discussed the matter with IRS Agent Hivick, the most qualified person in the FTF to make such a determination.

94. There is not a shred of evidence to support the "tax evasion" statement made by Agent Frost. In his deposition of 1-10-97, Agent Frost attempts to defend his "tax evasion" statement by saying

"I'm going to have to explain to you, the way that paragraph reads is poor sen-tex on my part, poor writing on my part." [(See encl #28, pg 125, lines 21-23); see App. 458].

95. Agent Frost false statement is more than "poor writing on his part". He had been in possession of the records in the box from May, 1992 to November, 1993, ample time for anyone to review, analyze and carefully study the records. The fact is that there was never any evidence of any tax evasion or other violations of any sort in the box of records. During 1992 the 1989-1990 IRS tax audit of Rasmusson's was completed and Agent Frost had access to that information which was all favorable to Rasmusson's.

96. Also, it is worth noting that no tax violation of any sort was ever filed by the IRS against Mark Rasmusson, Deborah Rasmusson, Rasmusson's, or Andy Gantkessy as a result of any investigation conducted by the USCS FTF.

97. The deliberate use of false information in a sworn affidavit by Agent Frost borders on criminal perjury. It also seriously undermines Frost's credibility his version of the facts and matters disputed in this case.

98. On pg 10, last para, encl #22 (App. 925, para 45), Agent Frost states that USCS Mills submitted a written report on 9-16-92 that he, Mills, observed a red Mercedes 560SL bearing Arizona license HSR-995 arrive at the Rasmusson's office at about 12:15PM. Two Hispanic males "left the vehicle and entered the Rasmusson's business. In a short time the two individuals departed. Later investigation determined that the vehicle was owned by Hector Barrera, a suspected drug trafficker from Corona, Calif."

99. It was never determined that either of the individuals observed on 9-16-92 was Hector Barrera. Tests which Mr. Ed Wagner and I conducted at the building where the Rasmusson's office was located in Sept. 1992 revealed that a single entry door served three businesses, Rasmusson's, Julie's Flight Service, and an Aircraft Parts

Store. Once the entry door closes, it is not possible, without entering the building, to determine which of the three business a person visits.

100. Agent Mills also testified in deposition during January 1997 that he was in charge of the surveillance conducted on the Rasmark business on several occasions. When asked about a particular entry on the USCS report of surveillance, Agent Mills was unable to name the officer who actually made the observation. [(See encl #35); see App. 1065). He stated that the officers did not make individual logs to detail what each had observed. His surveillance report simply names the officers who were on duty on a given date and does not identify the individual officer making a specific observation.

101. It would be impossible for most of this information to ever become testimony since the observations are not properly documented. Another example of unprofessional, sloppy investigation.

102. On pg 12, para 1, encl #22 (see App. 926, para 52), Agent Frost states that USCS Agent Schroeder and USCS Auditor Hector Barrera interviewed Arturo Vargas, the Rasmusson's former accountant. Agent Frost states that "Mr. Vargas stated that he found out that Rasmark Jet Charter, Inc. was making out double invoices, with the amounts on the invoices or the descriptions of the cargo carried slightly altered. In some cases the number of the invoice was the same, however, the amount due Rasmark Jet Charter, Inc or the description of the cargo was changed."

103. Mr. Vargas also allegedly stated that after leaving Rasmark, he worked for Apodaca and Jensen. Albert Apodaca told Mr. Vargas that "Deborah Rasmusson admitted not paying on $100,000.00 in income in 1990 or 1991." In Albert Apodaca's affidavit of 9-24-96 Mr. Apodaca denies ever making such a statement to Mr. Vargas and further denies ever hearing such a statement made by Mrs. Rasmusson.[(See encl #24); see App. 335].

104. In Mr. Vargas' affidavit of 2-3-97,[(See encl #29); see App. 360], Mr. Vargas denies that he ever told Agents Schroeder and

Barrera that Rasmusson's were "double billing." He stated that he told them that "in some instances, if a customer or Rasmusson's lost an invoice, a new invoice was prepared to replace it. The second invoice would be identical to the lost invoice. The dollar amount and cargo would not be altered."

105. Mr. Vargas also did not recall making any statement to the agents that Albert Apodaca told him that Deborah Rasmusson told Apodaca that she failed to pay taxes on $100,000.00 of income in 1990 or 1991.

106. The above is another instance of "creative writing" by USCS and members of the FTF. In few, if any, of the instances where statements were taken from potential witnesses were the persons interviewed ever allowed to review their statements for accuracy. It is noted that many of the witness statements were flawed.

107. On pg 11, encl #22 (see App. 925), paras 47-50, Agent Frost relates details of the search and arrest of Deborah Rasmusson and Blanca Avelar at the Ysleta POE on 11-10-92. This incident has been discussed in detail earlier in this affidavit. The information as regarding the search and arrest of Deborah Rasmusson and Blanca Avelar by Agent Frost has little or no bearing on his request for search warrant. None of the information related by Agent Frost ever resulted in the development of any significant evidence of any criminal violation of which I am aware.

108. On pg 12, encl #22 (see App. 928, paras 57-62), Agent Frost relates information obtained from EPPD Officer Clifford Gongaware on 3-1-93. On 7-13-92 Officer Gongaware was on duty at the El Paso Airport. Sometime after midnight he observed a truck with a Chihuahua license enter the Rasmusson's loading area, inside the airport fence. The truck was unloaded and it's cargo loaded onto a Rasmark plane. Officer Gongaware had been told by the driver of the truck that the cargo was auto seat belts. While the plane was being loaded, Gongaware noticed that two men stood near the plane, one facing North and one facing South.

109. Although Agent Frost makes the above activities seem unusual and suspicious, they were in fact very normal. Ford employee, Beverly Enriquez and former Ford employee, Andy Gantkessy, have stated that they often loaded Rasmusson's planes between midnight and 3:00AM. The charters normally had to make deliveries to the assembly plants by 5:00 AM. Seat belts was a cargo often delivered from the Juarez Ford warehouse. The two suspicious males standing near the plane were probably the pilot and co-pilot waiting to enter the plane once it was loaded. It is also noted that the event was witnessed in July, 1992, and was not reported or used until March, 1993.

110. A second similar incident was used by Agent Frost on pg 13, encl #22 (see App. 929, paras 63-65). He states that in July, 1992, EPPD Officer Andrew DeAngelo was working a night shift at the airport. Officer DeAngelo observed two men with rifles standing beside a Rasmark plane while it was being loaded with cargo. The officer told his supervisor who told him to stay clear of the area since Rasmark was under investigation.

111. Again, Agent Frost implies that this information indicates that Rasmark was engaged in some illegal activity. The "dated" information was several months old and was never corroborated. If the officer actually saw two men with rifles, both he and his supervisor failed to take proper action. The area in question is within the airport security fence. The search of the Rasmark business by FTF agents failed to reveal any rifles. The trucks from Juarez making deliveries to Rasmark are inspected at the border and the drivers would certainly not carry rifles in their trucks. There is no credible evidence whatsoever to corroborate the information obtained from officer DeAngelo. This is another example of Agent Frost doing "creative writing".

112. Officer DeAngelo observed what he believes are two men inside the security fence of the El Paso International Airport armed with rifles. He reports this observation to his supervisor who orders Officer DeAngelo to disregard and take no action because Rasmark is under investigation by the feds. This is an obvious false statement either by Frost or by DeAngelo or both conspiring together to bolster and support Frost's effort to deceive the magistrate into finding probable cause

where none exists. Men with rifles inside the airport security fence could reasonably be intent on carrying out a hijacking of an aircraft or some terrorist activity. No officer or supervisor would permit unknown persons carrying rifles inside airport security fence to go about their unknown business unchallenged or unidentified where the safety of hundreds of persons could be in question.

113. Page 14, encl #22 (seeApp. 929, paras 67-77), deals with the Gail Beach interview stated in her deposition of 1-31-97,(See App. 902), that she told Agent Frost that much of the information she provided to him was rumor and hearsay. Agent Frost used the information from Beach without any regard for it's accuracy. Another attempt to mislead the U.S. Magistrate.

114. It is further noted that in Beach's answers to admissions Mrs. Beach denied that she told Agent Frost that "the Rasmussons were engaged in a "kick-back "scheme with Joe Sudomir and Andy Gantkessy." [(See encl 32); see App. 1048]. This is another example where a FTF agent misquotes a witness, does not allow the witness to review the contents of their statement, then uses the false or misleading information in a sworn affidavit. Agent Frost uses the statement which Mrs. Beach has disavowed on pg 14, para 68 of encl #22 (see App. 929]. Agent Frost seems to be guilty of this tactic more that any other member of the FTF.

115. Agent Frost also uses similar information obtained from Chris Hines, a former Rasmark employee who was fired. [(See pg 15, encl #22); see App. 929, paras 78-81]. Little or none of the information furnished by Hines was ever corroborated. In Mr. Hines Answers to Admissions propounded by Plaintiffs[(See encl #34); see App. 1060) Hines makes the following denials.

116. He denied that he told Agent Schroeder and Detective Holland that he heard Debrah Rasmusson state that "the money was for a person who had given them a lot of business."

117. He denied that he told Agent Schroeder and Detective Holland that "Debra Rasmusson went on to state that she owed Andy

Gantkessy some money, but could not put his name on the check."

118. He denied that he told Agent Schroeder and Detective Holland that "Rasmark was billing Ford for flights that did not occur."

119. He denied that he told Agent Schroeder and Detective Holland that "The account is in the name of Mark and Debbie Rasmusson, 6825 Convair, El Paso International Airport, El Paso, Texas."

120. Misquoting Mr. Hines and not allowing him to review the content of his statement is another example of "sloppy and irresponsible" police work.

REGARDING THE TRASH PICK UPS AT THE RASMUSSSON RESIDENCE, 11157 LEO COLLINS:

121. Agent Frost discusses the trash pick ups on pages 16-18, encl #22 (see App. 933, paras 82-86). Blanca Vasquez, the Director of the El Paso Sanitation Department advised me that her agency will only allow a trash pick up by a law enforcement agency. The agency must submit a letter to the Sanitation Dept. If the request is approved, a route supervisor is instructed to contact the requesting agency and arrange details of the pick up. The law enforcement officers are never allowed to enter the property where the trash is being picked up. The request letters are only maintained on file for two years and then destroyed.

122. Testimony offered by members of the FTF indicates that a request letter was probably submitted. Both EPPD Detective Holland and EPSO Detective Baker testified that they received trash from the Rasmusson residence through a Sanitation Dept. worker a few blocks away from the residence. However the Sanitation Dept. worker was not identified and therefore the chain of custody of any evidence found in the trash would be incomplete.

123. It is noted that both Deborah and Mark Rasmusson stated that items allegedly found in their trash were never discarded by either of them. FTF officers deny ever entering upon the Rasmusson property

to pick up trash.

124. Agents Frost and Schroeder testified in their January, 1997, depositions that trace amounts of narcotics were found in the Rasmusson trash. [(See encl #31); see App. 1090]. It is not possible to determine from Det. Keith's report whether he picked up the trash from the residence or from a Sanitation Dept. worker in the neighborhood. Keith states that a plastic bottle top found in the Rasmusson trash was tested by Agent Schroeder with a chemical field test kit and tested positive for cocaine. A silver spoon with black residue tested positive for heroin.

125. It is noted that if Det. Keith removed the items directly from the Rasmusson trash, he entered the property illegally and made an unlawful search. If the items were recovered from a Sanitation Dept. employee ,and that employee was not identified , there is no complete chain of custody for the evidence back to the Rasmusson residence. Detective Baker stated that he did not note the names of the Sanitation Dept. workers from whom he obtained trash and Detective Keith does not include any such names in his report.

126. It is also noted that none of the FTF Agents interviewed during the January, 1997, depositions indicated that any fingerprint examinations or other lab examinations were ever made of the items which allegedly contained trace amounts of cocaine and heroin. Mr. Rasmusson stated that there was a major remodeling job going on at the Rasmusson residence during much of the time period covered by the trash pick-up. Construction workers and numerous other individuals had access to the house and may have thrown the questioned items in the trash.

127. Again, it was sloppy police work on the part of the FTF agents not to preserve the items containing the trace amounts of narcotics. These items should have been handled in accordance with accepted evidence handling methods but that was not done.

128. On pgs 14-15, encl #22 (see App. 930, paras 72-77), Agent Frost related information he stated that he obtained telephonically

from Steve Thorn of Taos, NM. The information relates to a conversation Thorn allegedly had with Donald M. Joseph, a former Rasmark employee. Mr. Thorn thought that Mr. Joseph's name was "Johnson". Thorn stated that "Johnson" told him that he, "Johnson" and Mark Rasmusson were flying controlled substances and drug money, "all over the place" and that the DEA is aware of their activities but can't catch them."

129. Donald Joseph responded to the allegations made by Thorn in an affidavit dated 7-15-96.[(See encl #33); see App. 353]. Mr. Joseph makes a detailed denial of all the allegations made by Mr. Thorn to Agent Frost. Mr. Joseph also stated that both he, Joseph, and Thorn were intoxicated at the time the conversation took place.

130. Agent Frost never indicates that he made any effort to verify any of the information he received from Mr. Thorn. It was what he, Agent Frost, wanted to hear so he simply used the information without any regard for it's validity.

131. The information on pg 19, encl #22 (see App. 936), paras 95-100, relating to the Andy Gantkessy interviews has been discussed at length earlier in this affidavit and will not be readdressed. The information furnished by Mr. Gantkessy, obviously under extreme duress, is of questionable validity. It is noted that no significant evidence was ever developed as a result of the information related by Agent Frost on pg 19 (see App. 936).

132. On pg 24, encl #22 (see App. 943, paras 115-19), Agent Frost alludes to the fact that Mark Rasmusson was living beyond his means. He implies that Mr. Rasmusson had some other source of income. Had Agent Frost reviewed the business records of Rasmark, as he should have done, he would have known that Rasmark was a thriving air charter business before losing it's business with Ford Motor Company. At one point Ford owed Rasmark about 1.5 million dollars for back invoices. That figure certainly represents more than " one flight per day", as estimated by Agent Frost.

133. ON [sic] pg 25, encl #22 (see App. 945, para 123), Agent

Frost alludes to "double invoices" submitted to Ford by Rasmark. All investigation conducted by the FTF, internal audits conducted by Ford, interviews with Ford employees, and an extensive review of Rasmark business records, and an IRS audit failed to reveal a single documented case of "double billing" to Ford by Rasmark. Beverly Enriquez, a Ford El Paso employee, stated in her affidavit that Ford uses an accounting system which makes it virtually impossible for "double billing" to get through the system.

134. Agent Frost alleges in para 126, encl #22 (see App. 946, para 126), that Ford somehow was defrauded by Rasmark and that the Ford checks to Rasmark were sent through the U.S. Mail, constituting a federal violation. This simply didn't happen and there was never any evidence to corroborate the allegation made by Agent Frost.

135. On his January, 1997 deposition Agent Frost was unable to relate a single instance of "mail fraud" which was corroborated through his review of Ford records.

136. In summary, Agent Frost's affidavit, encl #22 (see App. 912-947), is riddled with false, misleading, inaccurate, unverified information. I believe that Agent Frost was aware of this fact and he intentionally used the information to mislead the magistrate into finding probable cause where none existed. If Frost had probable cause, there would be no need for him to lie or mislead the magistrate in order to obtain the search warrant. The fact that he still refuses to acknowledge the fact that the majority of the information is false, unreliable or misleading convinces me that the credibility factor for Agent Frost is "near zero".

THE SUPERVISION ISSUE

137. The fact that Agent Frost was allowed to repeatedly lie and distort the truth in written reports and at times under oath in affidavits is a strong indication that his supervisors either condoned and encouraged Frosts illegal actions or acquiesced in what he was doing.

138. Supervisor Wilczewski read Agent Frost's reports and

attended regular briefings conducted at the FTF. Certainly Mr. Wilczewski has most of the supervisory responsibility for Agent Frost's irresponsible, illegal actions. If there was a "cover up" of any sort, Mr. Wilczewski must have been involved. He obviously knew about the release of investigative case information to Ford by Agents Frost and Schroeder, the "beer incident" at the USCS office during the 5-23-92 interview of Mrs. Rasmusson, the extended, unwarranted , and the punitive use of L/Os maintained for months at a time resulted in outrageous strip searches of Rasmark pilots, crew members and passengers. Mr. Wilczewski did nothing to control Agent Frost's overzealous activities. There is no indication that any action was taken to discipline Agent Frost after the 5-23-92 "beer incident". Wilczewski testified in his deposition [(pg.54, not enclosed as an exhibit); see App. 810] that he assisted Frost in preparing Frost's November 19, 1993, search warrant Affidavits.

139. ASAC Donnie Reay and SAC Michael Lappe must also have known, or at least should have known, what was happening at the FTF. The fact that SAC Lappe signed the unwarranted, vindictive, "poison pen" letter to Ford indicates to me that he supported the actions of Agent Frost, who drafted the letter.

140. The letter to Ford was clearly punitive in nature and served no investigative purpose whatsoever. ASAC Reay should have raised an objection to sending the Ford letter. His failure to do so indicates his support for the actions of Agent Frost.

141. Likewise, ASAC Reay knew about the "beer incident" and apparently took no action to discipline Agent Frost for what must have been a clear violation of USCS policy. Such conduct would certainly violate the policies of all reputable law enforcement agencies with whom I have ever been associated.

142. The other FTF officers from the EPPD and EPSO assigned to the FTF were drawn into Agent Frost's unwarranted and illegal activities. It is accepted procedure that when state and local police officers participate in a multi-agency task force, the supervision of that task force is most often provided by one of the federal agencies. In this

case that agency was USCS. The EPPD and EPSO officers had little choice but to comply with the orders given by the USCS Agents, usually Agents Frost and Schroeder.

143. The conduct and character of Agent Frost seem to be at the very heart of this case. He was the motivating force behind most of the extremt actions at issue in the case. He seemed determined to destroy Mark Rasmusson and Rasmark by any means. Many of the actions taken against Rasmark were on their face clearly punitive. The Ford letter, the extended L/Os and unwarranted strip searches, the use of false and misleading information in official reports, and the seizure of a vehicle from Mrs. Rasmusson over 1/10 gram of marijuana. (This seizure was dropped but the Rasmussons spent about $2,500.00 in legal fees and over $3,500 for a bond during the process).

144. The action taken by Agent Frost which most clearly indicates his intent to "punish" Mr. Rasmusson and Rasmark relates to the seizure of aircraft maintenance records during the November 1993 search of the Rasmark business. All the Rasmark aircraft maintenance records were seized. These included pilot log books, engine logs, and in general all the FAA records required by law to operate a commercial charter service.[(See encl #36); see App. 365].

145. Mr. Vaughn stated that without the FAA required records Rasmark was forced to cease operation for an extended period. Agent Frost never indicated that the records were ever used for any investigative purpose. Rasmark spent thousands of dollars attempting to recreate engine logs and other records so that the company could resume operations. Despite repeated pleas made to Agent Frost by Mr. Vaughn and even FAA, Agent Frost held on to the records.

146. Agent Frost even used the records as "bait" to arrange meetings with Mr. Vaughn where repeated efforts were made by Agent Frost to persuade Mr. Vaughn to become an informant for the FTF. When a court order was finally obtained, Agent Frost reluctantly released the records in June 1994, about seven months from the time they were seized.

147. It is also noted that Mr. Vaughn stated that the records were returned in a state of "disarray" and not all the records were returned. A critical engine log book was never returned.

148. The above actions by Agent Frost indicate to me that he has a total disregard for the rights of U.S. citizens and feels that he is "above the law". If there is still justice in our country, Agent Frost and his associates who committed the outrageous acts in this case will be held accountable for their actions. It is obvious that the USCS does not intend to reprimand him or to assure that his unacceptable conduct ceases.

/s/ Henry A. Webb
Signature of Affiant

State of Texas
County of El Paso

Henry A. Webb, personally appeared before me, and being duly sworn, declared that he signed this affidavit, and further stated that he read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 3rd day of April 1997.

/s/ Dolores Diaz Olague
Notary Public
My commission expires 5/5/99.

Affidavit of Henry A. Webb
MARCH 18, 1997

[Paragraph numbers added to text.]

1. My name is Henry A. Webb. I am a citizen of the United States. I have resided in Canutillo, Texas since January 1978. I have the following experience in the law enforcement field. I graduated from the University of California-Berkeley in 1960 with a major in Police Administration. From June 1960 to May 1962 I was a Border Patrol Agent for the USI&NS. When I left the Border Patrol in May 1962 to enter the Federal Bureau of Investigation, I was serving as Sector Training Officer for the Chula Vista Border Patrol Sector.

2. I entered the FBI as a Special Agent in May 1962 where I served until my retirement in August 1985. During my tenure in the FBI, I had the following assignments: General investigative felony case investigations on several Indian Reservations in New Mexico and Montana. Seven years handling law enforcement liaison with Mexican Police Agencies in Baja California, Mexico. Seven years assigned to the Great Falls, Montana Resident Agency, a 12 county area which included two Indian Reservations. During three or four of those years I was the senior resident agent responsible for three or four other agents. I also handled liaison with law enforcement agencies in two Canadian Provinces.

3. From 1979 to 1985 I was assigned to a long term FBI undercover project based in El Paso. I did most of the undercover work which included meeting and negotiating with criminals, buying stolen heavy equipment, stolen vehicles, and narcotics.

4. From August 1988 to March 1990, I was employed by the West Texas Multi-County Narcotics Task Force as an investigator and Supervisor. From Dec 1988 to March 1990, I was the Assistant Project Director for the Task Force. My duties included supervising about 15 to 20 narcotics investigators and one other supervisor.

5. From July 1990 to July 1995 I was employed by the Texas

Criminal Justice Department as the Texas State Representative to Operation Alliance, the Southwest Border Narcotics Coordination Center. My duties included assisting in drafting multi-agency drug initiatives, locating new resources, and screening and coordinating requests for military assistance from state and local law enforcement agencies through out Texas.

6. In addition to my many years of investigative training and experience, I have also received extensive training as a law enforcement instructor. From 1964 and throughout my FBI career I was an FBI firearms expert and general police instructor. I have conducted hundreds of hours of instruction to FBI agents and to law enforcement officers in California, Montana, Idaho, Canada, and Texas. For four years, I conducted classes for officers and supervisors at the Annual Texas Narcotics Control Program training seminar, a statewide meeting attended by about 600 to 700 officers. I have lectured on officer integrity, officer misconduct, suspect and witness interviews, report writing, informant development and supervision, undercover operations, evidence collection, crime scene investigations, tactical arrest situations, reasonable use of force and several other subjects.

7. During my tenure as an FBI Special Agent I received regular training on legal issues related to interviews of witnesses, interrogations of suspects, and arrests and detentions of suspects. I have testified before federal Grand Juries on many, many occasions and have testified in both federal and state court many times.

8. The purpose of this affidavit is to offer expert witness testimony in the civil suit filed by Mark B. Rasmusson, et al vs. Lawrence E. Frost el al. I was hired in my expert capacity by Attorney Sandra Sheppard, attorney for Mr. Rasmusson in early August 1996. Since that time I have read hundreds of pages of trial testimony, and investigative reports from USCS, DEA and other federal agencies as well as El Paso Police Department reports. I have also read numerous declarations made by members of the USCS Financial Task Force and I personally witnessed the depositions taken from Agent Frost and other members of the USCS Financial Task Force during January 1997. 1 have reviewed written reports of interviews and other handwritten

material obtained from Ford Motor Co. Security Officers relating to their contacts with Agent Frost and other USCS officers as well as their contacts with witnesses in this case. I have conducted numerous interviews of witnesses and have prepared several affidavits which were sworn to and signed by witnesses.

9. Based upon several months of reviewing extensive documentation, conducting live interviews, reviewing investigative reports, declarations, and affidavits made by witnesses on both sides of this case, I feel that I am qualified to make expert witness observations regarding the conduct and activities of Agent Frost and the other individuals named in this civil action. My observations and opinions are based upon my extensive experience , approximately 32 years law enforcement experience as an investigator, instructor, and supervisor, both at the federal level and at the state and local level.

10. The scope of this affidavit will be limited to the issue of disclosure of investigative case information on the part of Agent Larry Frost, Agent Fred Schroeder, and SAC Michael Lappe.

11. On June 2, 1993 Andy Gantkessy, a Ford-Favesa employee was interviewed by Agent Frost, several other federal agents, and an officer from the El Paso Police Department. The interview was conducted without notice and testimony from FBI Agent Acosta and Police Officer Holland indicates that Mr. Gantkessy had been under surveillance for at least two days by members of the USCS Financial Task Force. Mr. Gantkessy, a heart patient who had previously suffered a stroke, claims that he was threatened with arrest if he refused to talk to the agents. The agents stated that they never intended to arrest Mr. Gantkessy so they had no obligation to advise him of his rights or to tell him that he did not have to answer their questions.

12. Under extreme duress, Mr. Gantkessy finally told the agents that he would admit to "anything they said". He allegedly admitted to receiving cash payments and free air transportation from Deborah Rasmusson in return for booking Ford freight flights through Rasmark Jet Charter, Inc. FBI Agent Acosta stated under oath that the interview with Mr. Gantkessy lasted between 30 and 45 minutes. The

report of this 30 to 45 minute interview with Mr. Gantkessy was written up by USCS Agent Fred Schroeder in only six lines. [(See page 2, enclosure #1); see App. 1093-1097]. No mention is made of the fact that Mr. Gantkessy was "pressured" to become a confidential source of information, (an informant) for the USCS Financial Task Force.

13. FBI Agent Acosta testified under oath that Mr. Gantkessy agreed to "cooperate" with the Task Force. Agents Frost and Schroeder deny that Mr. Gantkessy was even asked to cooperate. Agent Acosta stated that he prepared his own, FBI memo, which reported the results of the Gantkessy interview to Agent Acosta's FBI Supervisor. Although this FBI report has not been made available to Mr. Rasmussons attorney, it should resolve the conflicting testimonies between Agents, Frost, Schroeder, and Acosta regarding the purpose of the interview with Mr. Gantkessy. Agent Acosta stated he never saw a copy of Agent Schroeder's report of interview with Mr. Gantkessy.

14. According to FBI Agent Acosta, Mr. Gantkessy was contacted after the 6-2-93 interview and requested to come to the USCS office for a second interview which was conducted on 6-3-93. The purpose of the second interview was to "clear up some points not resolved in the first interview." The 6-3-93 interview was conducted by USCS Agent Schroeder and Agent Acosta. Mr. Gantkessy has stated under oath that more threats were made against him during the second interview and that he was asked to "wear a wire" and record conversations with Mark Rasmusson. He alleges that Agent Schroeder asked him to make a call to Mark Rasmusson from the USCS office and that Agent Schroeder even told him, that he, Schroeder would tell him what to say.

15. Again, as in the first interview, the results of the interview were recorded and reported by Agent Schroeder. As in the first interview, there is a direct conflict between the accounts of Agents Schroeder and Acosta. Agent Acosta states, Pg 58 of his [January] 1997 deposition, (Enclosure #2); See App. 693]: "We asked him(Gantkessy) if he wanted to provide information but we didn't approach him as a source. We asked him if he wanted to cooperate if there is anything he can do to help us, we would appreciate it." Agent Acosta's testimony

clearly indicates that the purpose of the interviews with Mr. Gantkessy was to secure his "cooperation" as an informant against Mark and Deborah Rasmusson.

16. As in the first interview, Agent Acosta stated that he prepared a summary of the 6-3-93 interview with Mr. Gantkessy for his FBI Supervisor. The report of interview prepared by Agent Schroeder makes no mention of any attempts to persuade Mr. Gantkessy to "cooperate"with the USCS Task Force. It is noted that Agent Schroeder even told a Ford official in a Sept. 24, 1993 interview at El Paso, [(See enclosure #3); see App. 1305], that Mr. Gantkessy requested the June 3, 1993 interview with Agents Schroeder and Acosta. Agent Schroeder's statement is in direct conflict with the testimony of Agent Acosta who stated that either Acosta or Schroeder called Mr. Gantkessy and asked him to come to the USCS office for the interview. The FBI memo prepared by Agent Acosta should aid in resolving this conflicting testimony.

17. It is also noted that during the depositions of both Agents Frost and Schroeder, both admit to having met with officials from Ford and discussing investigative case information from the Rasmark case with them. Neither Agent Frost or Schroeder admitted to preparing any written reports of their meetings with Ford officials at El Paso. It has not been determined whether either Agent Frost or Schroeder documented the meetings which were documented by Ford.

18. It is also worth noting that most, if not all, of the information passed to Ford by Agents Frost and Schroeder relates to alleged violations by Mr. Gantkessy of Ford Company policy, and not violations of any federal statutes. These violations include accepting free air transportation, gifts, and in some cases cash from Deborah Rasmusson. No criminal violation was ever established which was acceptable to either the Federal AUSA or the El Paso County District Attorney. There simply was not sufficient proof that Mr. Gantkessy was violating anything other than Ford Company policy.

19. During the two interviews which Agents of the Task Force conducted with Mr. Gantkessy, he, Mr. Gantkessy, alleges that he

was repeatedly told that if he refused to "cooperate" the Agents would furnish to Ford the details of the admissions which Mr. Gantkessy made regarding accepting gifts, cash, and free air transportation. Mr. Gantkessy contacted two El Paso lawyers, Mr. Tony Silva and Mr. Bernard Pinetta [sic] and told them of the requests that had been made of him by the task Force Agents. Both attorneys advised Mr. Gantkessy to refuse to cooperate with the agents.

20. When Mr. Gantkessy relayed his decision to Agent Schroeder, Agent Schroeder allegedly stated that the task force would start "playing hardball". Actually there had already some action taken by the USCS task Force to jeopardize Mr. Gantkessys job. On January 28, 1993 an FBI administrative subpoena was served on Ford World Headquarters in Michigan. The subpoena ordered Ford to deliver to the FBI, "any and all shipping records pertaining to shipments of Ford Motor Company goods by Rasmark Jet Charter, Inc. Of El Paso, Texas for the years 1990, 1991, and 1992." [(See enclosure #4); see App. 1297].

21. All the records which were requested through the above subpoena could have been obtained by serving the same subpoena on the Ford office in El Paso. There was never any attempt on the part of any members of the Task Force to obtain any information about Rasmark from the El Paso Ford office.

22. As in the case of the conflicting statements regarding the interviews of Mr. Gantkessy, there are serious conflicts between the testimony of Agents Frost and Acosta regarding Fords compliance with the FBI subpoena. Agent Acosta testified that Ford complied promptly with the subpoena and furnished all the records requested within two or three months. This would mean that all the records would have been received by the FBI no later than April 1993. Agent Acosta stated that no one from Ford contacted the FBI regarding having any problem in complying with the subpoena.

23. Agent Acosta stated that when he, Agent Acosta, received the Ford records, he made copies of all the material and furnished same to Agent Frost and the USCS Task Force. Agent Acosta made a cursory

review of the records but neither he nor any other FBI Agent did any analysis of the records. Agent Acosta stated that the purpose of the subpoena was to 'get an idea of the amount of money being generated between Rasmark and Ford'. [(See enclosure #5, Pg 90); see App. 717]. Agent Acosta was not aware that USCS SAC Michael Lappe sent a letter to Ford dated 7-26-93 wherein extensive investigative case information related to the activities of Mr. Gantkessy, Deborah Rasmusson and Rasmark was revealed to Ford. [(See enclosure #6); see App. 1299].

24. Agent Frost has testified that the purpose of the letter to Ford was to "obtain the assistance of Ford Motor Company in providing us with the information in their files regarding the Rasmussons and Rasmark Jet Charter." [(See enclosure #7, pg 85, lines 3-8); see App. 432, lines 2-8]. Agent Frost further states "Due to the fact that Ford Motor Co. had already performed an extensive investigation of these allegations, had a file on it which we wished to review. Additionally, they had had other information requested from them. And they were needing guidance as to what it is that we needed within their accounting systems."

25. Agent Acosta again directly contradicts Agent Frost. According to Agent Acosta, Ford had no trouble at all complying with the FBI subpoena. All the records requested in the subpoena had been received by the FBI by April 1993, about three months before the USCS "disclosure letter". Agent Frost further casts doubt on the real intent of the letter by his denial that he even reviewed the Ford records, copies of which were furnished to him by the FBI.[(See enclosure #8, pg 90); see App. 440]. He stated that no one from the USCS performed any document analysis of the Ford records, denies that he ever asked for a copy of the Ford records obtained by the FBI, and finally stated that he did not believe in using records seized through administrative subpoenas in financial cases."[(See enclosure #9, pgs 91,92); see App. 441].

26. It appears obvious from the contents of SAC Lappe's letter to Ford that the intent is to influence Ford to fire Mr. Gantkessy and to terminate the business relationship with Rasmark. The letter contains information which is utterly false and which is not related in

any way to any federal criminal violation. One ridiculous statement in the letter states Mr. Gantkessy stated that, "Deborah Rasmusson offered him $5,000.00 per Ford charter which Gantkassy dispatched through Rasmark". Ford employees at El Paso who were responsible for the accounting records and invoices submitted by Rasmark have testified both to Ford officials and through affidavits that the average Rasmark-Ford charter cost between $2,000.00 and $3,000.00 per flight. The amount of the alleged 'kickback' is ridiculous on its face.

27. The information which SAC Lappe requests from Ford had already been furnished to the FBI about three months prior to the date of the Lappe letter. In addition to the disclosures made in the July 1993 Lappe letter, additional disclosures were also made to Ford officials by Agents Frost and Schroeder.

28. Enclosure #3 (see App. 1305), a Ford memo documenting a meeting at El Paso between Agent Fred Schroeder and a Ford official. The following statement is typed in bold print capital letters at the bottom of the memo.

> "THESE AGENTS REMINDED US OF ONE VERY IMPORTANT ISSUE. GANTKESSY CAN NOT TAKE THE STAND AND TESTIFY ON ANY OF THESE ISSUES IF HE WERE TO BRING A LAWSUIT AT FORD, BECAUSE ITS A CRIMINAL OFFENSE TO LIE TO FEDERAL AGENTS. IF THE ISSUE GOES TO COURT HE WILL END UP BEING PROSECUTED FOR FALSIFYING INFORMATION TO THE FEDERAL AUTHORITIES. THEY ARE STILL COOPERATING AND WILLING TO TESTIFY TO GANTKESSYS PARTICIPATION IN ACTIVITIES OF RASMARK."

29. The above statement clearly indicates that USCS and members of the Task Force intended to assure Ford that Mr. Gantkessy could never defend himself against any civil action involving Ford. The contents of the above Ford memo also demonstrates that USCS was receiving unlimited "cooperation" from Ford and did not need to send

any letter of explanation to convince Ford to cooperate.

30. A second Ford memo, [(See enclosure 10); see App. 1304], describes a meeting at El Paso between Agent Frost, Jim Pomaville, a Ford Personnel officer, and Phil Asiala, a Ford Security officer. The memo states, "Mr. Frost indicated that Gantkessy was deeply involved with the Rasmussons and Rasmark Charters, and described pertinent testimony that implicates Gantkessy in accepting money, air transportation, and other forms of kickbacks from Rasmark. He further explained that there are 11 full time federal agents from other departments within the federal government that are assigned on a full time basis to investigating this case. Their investigation centers around drug trafficking over the border from Mexico to the United States. He indicated that he could not discuss the investigation, nor could he reveal any other details, however, he assured us that Mr. Gantkessy has become a part of the investigation."

31. The memo closes by stating: "Based upon the advise from federal lawyers, they can and will testify as to their knowledge of Gantkessy's activities while employed by Ford Motor Co. Although they do not want to jeopardize their ongoing investigation in criminal activities involving Rasmark, he assured us that if requested, they could legally answer questions regarding Gantkessys activities and testimony during their investigation."

32. Another, and the final disclosure which will be addressed in this affidavit involves Mark Rasmussons ex-wife, Lori Nelson, who lives in Nevada. Agent Frost states that he contacted Lori Nelson in June 1992 to "gain information". [(See enclosure #11, pgs 92-93); see App. 444]. Agent Frost told Ms. Nelson that "I was conducting an investigation." He also told her that he had seen Deborah Rasmusson under the influence of controlled substances.

33. Agent Frost shortly thereafter made additional unauthorized disclosures to Mr. William Cole, attorney for Ms. Nelson. [(See enclosure #12); see App. 1292]. Mr. Cole states under oath that Agent Frost told him that there was an ongoing investigation by federal authorities concerning alleged criminal activities relating to criminal

charges which had been previously dismissed against Mark Rasmusson. Quoting Mr. Cole, "Mr. Frost stated that the charges had been dismissed during trial because a witness failed to appear and testify." Agent Frost also furnished Mr. Cole derogatory information of a personal nature regarding Deborah Rasmusson.

34. There clearly was no investigative purpose in Agent Frost furnishing the information to either Ms. Nelson or Mr. Cole. There is no information either from DEA or any other agency to support Agent Frosts missing witness statement.

35. A careful review of all the information which was furnished to Ford during the personal meetings between Agents Frost and Schroeder and Ford officials and through the July 1993 letter from SAC Lappe indicates the following. Most of the information has since proven to be false. Agents Frost and Schroeder knew or should have known at the time that the information was false. Gail Beach told Agent Frost that most of the information which she furnished to him was based upon "rumor and hearsay".

36. Agent Ford [sic] told Ford officials on 8-18-93 that the USCS investigation centered around drug trafficking over the border from Mexico to the United States. There was never any such indication either in the 1990 DEA investigation in which Mr. Rasmusson was acquitted or in any subsequent investigation. There simply never was any information to verify the statement made by Agent Frost. Agent Frost also stated to Ford that there were 11 full time federal agents from other departments within the federal government assigned on a full time basis to investigating this (the Rasmark). Again, this never was true. There was a much larger money laundering investigation being conducted by the USCS Financial task Force. Testimony indicates that the larger case probably focused on Guillermo Portillo. It is doubtful whether the larger case ever had eleven full time federal agents assigned to the case. Testimony indicates that the Rasmark case probably never had more than five or six full time federal agents assigned to it.

37. It is my opinion based on other exaggerations and misrepresentations of facts made by Agent Frost throughout his

deposition, his declaration, and his affidavits for search warrants that Agent Frost deliberately lied to the Ford officials to convey to them that the Rasmark case was much bigger than it ever was.

38. Agent Frost stated that Mr. Gantkessy was interviewed regarding his possible involvement in 'kickback ' violations related to the activities between Mr. Gantkessy and Rasmark. There is no indication that any legitimate investigation was ever conducted by any member of the USCS Financial task Force in that regard. Any such investigation would have necessitated the interviews of Ford clerical and accounting personnel in El Paso, particularly Beverly Enriquez and Manuela Barron. Neither of these individuals were ever interviewed by any member of the USCS Task Force. The facts indicate that Agent Frost merely used the "kickback" issue as an excuse to target Mr. Gantkessy as a potential informant.

39. The statements of Agent Frost regarding any possible investigation being conducted related to "kick-back" violations between Ford and Rasmark Jet Charter, Inc. are further refuted by the inattention to Joe Sudomir, Mr. Gantkassy's El Paso Supervisor. Gail Beach, a competitor of Rasmark, was interviewed by Agents Frost and Mills on 3-9-93. [(See enclosure #2); see App. 1072]. Beach told the Agents that "The Rasmussons were engaged in a 'kick-back' scheme with SUDOMIR and are currently engaged in such a scheme with GANTKESSY". Beach stated that "Deborah Rasmusson was paying SUDOMIR $1,000.00 per trip which SUDOMIR brokered through Rasmark for Ford Favesa."

40. Despite receiving the above information about SUDOMIR from Beach, neither Agent Frost nor any other member of the Task Force, including FBI Agent Acosta, ever made any attempt to interview SUDOMIR or develop any further information to prove or disprove the information furnished by Beach. None of the derogatory information regarding Joe Sudomir was furnished to Ford by Agent Frost or USCS although Mr. Gantkessy was fired and Mr. Sudomir was simply transferred to another city.

41. It is noted that Agent Acosta stated that he presented the

facts of his investigation of "kickbacks" received by Mr. Gantkessy to an Assistant United States Attorney for a prosecutive opinion. Since Agent Acosta's investigation revealed that Mr. Sudomir and not Mr. Gantkessy had the authority to determine which air charter companies were engaged to carry the Ford freight, the AUSA declined federal prosecution against Mr. Gantkessy for "lack of evidence". No effort was made by any member of the Task Force to investigate the activities of Joe Sudomir.

42. It is further noted that Gail Beach stated under oath that when she was interviewed by Agents Frost and Mills on 3-9-93, she advised the Agents that most of her information was based upon "rumor and hearsay". Agent Frost later used much of that same information as though it had been validated.

43. Mr. Gantkessy was fired by Ford and denied his retirement pension after 24 years of honorable employment. The business relationship between Ford and Rasmark Jet Charter, Inc. was also terminated. There is strong testimony which indicates that both the firing of Mr. Gantkessy by Ford and the termination of the Ford-Rasmark business relationship were directly related to the actions of Agent Frost and other USCS personnel who made unauthorized investigative disclosures to Ford.

44. In all my prior law enforcement training, both in the Border Patrol, FBI, and at the state and local level, I have been instructed that "No investigative case information is to be furnished to anyone outside law enforcement". The FBI has a very strict policy on the release of investigative information. Any release of investigative information, even to a law enforcement agency, must be documented by the agent making the release.

45. There is a very strict prohibition against releasing any case information to any civilian. In my total law enforcement career, I have never seen any case where so much information from an active investigative case was shared with a civilian business, such as furnished to Ford by officers of the USCS. The attempts by Agent Frost to justify those disclosures as necessary to further the USCS investigation are

simply not only questionable, they are directly contradicted by the testimony of FBI Agent Acosta on several issues.

46. I entered this case with a fierce loyalty to law enforcement based upon my 32 years in the profession. I told Attorney Sheppard on our first meeting that I would help her seek the truth, nothing more, nothing less. As I read the voluminous investigative reports, declarations, and affidavits, it became more and more obvious to me that Agent Frost not only embellished information which he used in reports, he used information which I believe he knew was false and unreliable. He used such information on at least three affidavits for search warrants and he furnished the information under oath. He later described one piece of false information As "poor sen-tex", poor writing on his part. His efforts to explain and justify the use of the false statements are grossly inadequate for an officer who has taken an oath to uphold the Constitution of the United States.

47. Based upon the other unprofessional actions of Agent Frost throughout the course of the Rasmark investigation, one can only assume that Agent Frosts motives in releasing the information were punitive and vindictive in nature. His frequent use of information which he knew or should have known was false and unreliable is a clear indication that he had no regard for the truth. The assumption that Agent Frost deliberately used false and misleading information in official investigative reports becomes a conclusion after one studies those facts and then compares them with other testimony.

48. Agent Frost's testimony is directly contradicted on several occasions by that of FBI Agent Acosta. His , Agent Frosts testimony during his deposition is evasive at best. The reasons Agent Frost offered for sending the "Poison pen" letter to Ford simply do not coincide with the facts supported by the testimony of Agent Acosta and the eventual facts developed the USCS Task Forces own investigation. It is noted that Agent Frost testified that he drafted the Ford letter which was signed by SAC Lappe. The letter was also read and approved by Michael Wilczewski, Agent Frosts USCS Supervisor and USCS Donnie Reay.

49. I strongly believe that if the FBI reports of Agent Acosta and other supporting documentation not yet made available to Mr. Rasmussons attorney, are released by the court, the activities of Agent Frost will further indicate that he has lied under oath on several occasions.

50. As a former "career law enforcement officer," I am offended and embarrassed by Agent Frost's lack of honesty, fairness, and professional integrity. Not only did he have no regard for the truth, he had no respect for the lives of those people who were the victims of his vindictive actions. Mr. Gantkessy lost a job and a pension which he had earned through 24 years of honorable service to Ford Motor Co.

51. The Rasmark business which was thriving, expanding, and was on the threshold of landing a major national contract with Ford was virtually "shut down." Once all the company records were seized through the USCS Task Force search warrant, it was practically impossible to operate. The fact that the aircraft maintenance records required by FAA were held by Agent Frost for 14 months without any justification, further indicates to me Agent Frost was simply being vindictive. This was simply one more punitive , unjustified action on the part of Agent Frost. The fact that his supervisors at USCS, SAC Michael Lappe, ASAC Donnie Reay, and Group Supervisor Michael Wilczewski did not properly supervise his activities and did nothing to halt his outrageous conduct is an indictment of all those individuals in USCS who were responsible for his actions. The fact that USCS legal counsel for USCS would authorize the release of a letter such as that sent to Ford by SAC Lappe in July 1993 clearly indicates that all Agent Frost's unjustified, outrageous actions were supported by his supervisors and by the Agency itself.

52. Supervisor Wilczewski supervised the day to day activities of Agent Frost. He, Wilczewski, reviewed and approved all Frost's investigative reports, and attended case progress briefings conducted by Agent Frost. As Agent Frost's first line supervisor, Mr. Wilczewski was in a better position than any of the other supervisors to know about Agent Frost's misconduct. Testimony indicates that not only did Mr. Wilczewski not deter Agent Frost from

unreasonable conduct, he, Wilczewski, condoned it by taking no action to stop it. Mr. Wilczewski also knew that the reports which were generated by Agent Frost and contained false and misleading information were being entered into USCS data bases where they were available to other federal and state law enforcement agencies.

/s/ HENRY A. WEBB

State of Texas
County of El Paso

Henry A. Webb, personally appeared before me, and first being duly sworn, declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 18th day of March 1997.

/s/ Edward Wagner
Notary Public
My Commission expires on 9/29/99

AFFIDAVIT OF HENRY A. WEBB

NOVEMBER 26, 1996

I Hank [Henry] Webb state that I have shot both still photographs and video film of Julie's Aircraft, located at 6805 Boeing, El Paso, Texas 79925. Julie's Aircraft is located South of Boeing and is in a two story building with three doors facing North towards Boeing.

My still photographs were taken on October 18, 1996, in the afternoon. The photographs were taken from the sidewalk in front of the building, the parking lot, and the second floor balcony at the Residence Inn, Unit 11. The photographs were taken using a 140 mm zoom lens and 35 mm film. In the photographs Ed Wagner entered the middle door of Julie's Aircraft, the only door accessible to the public, and stood inside facing Boeing. From my vantage point on the balcony, I was unable to identify Wagner standing inside the door, and I was also unable to determine if Wagner moved right or left after closing the door.

On November 26, 1996 1 shot a video of the exterior middle door of Julie's Aircraft using Panasonic Camcorder, with a 14 by 20 zoom lens. I again shot footage from the sidewalk in front of the building and from across the street on the second floor balcony at the Residence Inn, Unit 11. Ed Wagner entered the building and stood inside the door facing Boeing. He then moved to the right, and a few seconds later to the left. I was unable to observe Wagner's movements. In addition, Wagner was not visible on the video footage.

/s/ Hank Webb

State of Texas
County of El Paso

Hank Webb, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit and the statements contained therein are true.

Sworn to and subscribed before me this 26th day of November, 1996.

/s/ Edward Wagner
Notary Public
My commission expires on 9/29/99

[Paragraph numbers added to text]

AFFIDAVIT OF MARK RIDEN

MARCH 3, 1997

1. I, Mark Riden, state that I was employed as a United States Customs Service (USCS) Special Agent (SA) and Group Supervisor for twenty six and one-half years. I was a group supervisor from approximately February of 1988 until July of 1992. I retired in January of 1997. My experience as a special agent includes participating in multi-agency investigations involving currency violations, drug smuggling, and undercover operations. I also participated in surveillance, and the use of confidential informants. I was assigned to a Drug Enforcement Administration (DEA) Organized Crime Drug Enforcement Task Force (OCDETF) investigation involving multiple subjects, agencies, and multiple violations.

2. Based on my experiences I am knowledgeable of United States Customs Service policies and procedures and their applications to criminal investigations, asset seizures and forfeitures. My experience includes my basic training as a special agent, periodic refresher training, review of the USCS agent's handbook, review of USCS written policy and procedures, and my day to day application of their use as an agent and group supervisor.

3. I know through my experience that you are not allowed to disclose case related information to non law enforcement persons or entities other than to secure information or records. The only provision I am aware of that allows an agent to disclose any information to a non law enforcement person or entity is an investigative disclosure to obtain information. The standard on investigative disclosures is to disclose only the minimum amount of information necessary to obtain the information required. In my twenty six and one-half years experience I have never provided a non law enforcement entity or person a summary or synopsis of my case

or one of my agent's cases to obtain information or records.

4. I also know that the normal USCS procedure or policy is to conduct third party witness interviews with only two agents. This policy or procedure is followed because a witness could feel coerced or intimidated by the presence of more than two agents. In my experience with the USCS and as an agent assigned to the DEA OCDETF Task Force I have never participated in a witness interview with five (5) or more agents. I also know that it is not the normal USCS policy to conduct periodic surveillance of third party witnesses.

5. In my duties and responsibilities as a special agent and group supervisor I worked closely with the USCS inspectors at the ports of entry. In my position I have worked numerous "bridge cases" relating to the seizure of drugs, currency, weapons and other contraband. I know through this experience, that when a person entering the United States from Mexico is found to have a switch blade knife, the normal procedure is to take the knife and to destroy it and allow the person to go on their way unless there are aggravated circumstances such as an assault. I am not aware of any person entering the U.S. from Mexico having a vehicle seized for possession of one-tenth gram of marijuana after 1971. I also am not aware of a person having their vehicle seized for a seizure that small even under the USCS "zero tolerance" policy. The reason that an agent or inspector would not seize a vehicle for that amount of marijuana is that he or she would know the seizure action would not be sustained by the USCS legal counsel or the United States Attorney's office. Prior to May of 1971 vehicles were seized for small amounts of marijuana under old laws or policy.

6. Through my experience as a USCS special agent and group supervisor I have participated in writing and executing search warrants. I have also reviewed search warrants prepared by agents under my supervision. When a witness has denied statements attributed to them in an agent's report, and the agent utilized the report and statements in their affidavit for a search warrant, it is incumbent upon the agent to correctly report the information to the

court and magistrate. It is the responsibility of the agent preparing the report to include all pertinent information that goes to the credibility of a witness. Pertinent information includes the following: whether a witness is intoxicated or high on drugs when they were interviewed, whether the witness had been fired by the person they were being interviewed about, whether the witness was ill, and whether the witness being interviewed was a business competitor of the subject of the interview. The normal USCS procedure is to prepare reports of investigation on all witness interviews and to prepare the reports in a timely fashion, three to five work days.

7. I also know through my experience as a USCS agent and group manager that it is a violation of USCS policy and General Services Administration (GSA) policy to bring alcohol into the USCS office. It is improper to give alcohol to a witness or subject when you are attempting to obtain a consent to search relating to their property or business. Information obtained from any subject that is high on drugs or alcohol would not be credible.

8. In my capacity as a USCS special agent and group manager I am familiar with the Treasury Enforcement Communication System (TECS) lookouts and Federal Aviation Administration (FAA) lookouts. An agent can place a TECS lookout on persons, aircraft, and automobiles entering the United States. The information input into TECS normally includes the agents name and a contact telephone number and the allegation surrounding the lookout. An agent can provide specific instructions regarding the lookout such as: search the person, automobile, or aircraft; identify all persons in the automobile or aircraft; or notify the agent that placed the lookout if the person, automobile, or aircraft enters the United States. FAA lookouts apply to domestic aircraft flights and are used to track the departure and arrival of aircraft. Lookouts are normally placed for a period of thirty days after which time they are removed if there is no related enforcement activity such as a seizure or arrest.

9. I have also participated in extensive surveillance activity as both a USCS special agent and group supervisor. I have

also prepared, reviewed, and approved reports of investigation relating to surveillance activity. The normal procedure is for each agent to prepare a separate report of the activity they personally observed, or to prepare a single report of investigation and identify by event which agent observed the activity. I also know another way to properly document surveillance activity is through the use of a surveillance log which clearly identifies which agent or officer observed the documented activity. It is also normal procedure to state in the surveillance report of investigation how a subject was identified, such as if the subject was known to the agent or officer, or if the subject was identified by a photograph, etc. A vehicle license plate number would not be conclusive evidence of a driver of a vehicle. I know from my experience that a surveillance conducted by multiple agents and related report of investigation which did not identify the agent who observed the documented activity, would be considered unsatisfactory for evidentiary purposes. The USCS, Office of Enforcement, has assigned under it's control the following aircraft; a Cessna 206, , a Cessna Citation, a King Air, and two Blackhawk helicopters assigned to the Albuquerque RAC office.

10. Through my duties as a group supervisor with the USCS I know that a group supervisor is responsible for conducting periodic case reviews, both formal and informal, to ensure that a case or investigation is being properly handled by the agent. Factors normally considered in a case review are the quality of the evidence obtained, timeliness in completing the investigation, and whether the investigative goals or objectives are being met. It is a group supervisor's responsibility to ensure that long term cases or investigations justify the use of the resources employed. Both as a USCS agent and group supervisor I have never been involved in an investigation that lasted over four years and did not result in any arrests or seizures.

/s/ Mark Riden

State of Texas
County of El Paso

Mark Riden, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit, and the statements contained therein are true.

Sworn to and subscribed before me this 3rd of March, 1997.

/s/ Edward A. Wagner
Notary Public
My commission expires on 9/29/99

AFFIDAVIT OF MARK RIDEN

MARCH 18, 1997

I, Mark Riden, state that I was employed as a United States Customs Service (USCS) Special Agent (SA) and Group Supervisor for twenty six and one-half years. I was a group supervisor from approximately February of 1988 until July of 1992. I retired in January of 1997. My experience as a special agent includes participating in multi-agency investigations involving currency violations, drug smuggling, and undercover operations. I also participated in surveillance, and the use of confidential informants. I was assigned to a Drug Enforcement Administration (DEA) Organized Crime Drug Enforcement Task Force (OCDETF) investigation involving multiple subjects, agencies, and multiple violations.

Based on my experiences I am knowledgeable of United States Customs Service policies and procedures and their applications to criminal investigations, asset seizures and forfeitures. My experience includes my basic training as a special agent, periodic refresher training, review of the USCS agent's handbook, review of USCS written policy and procedures, and my day to day application of their use as an agent and group supervisor.

I know through my experience that you are not allowed to disclose case related information to non law enforcement persons or entities other than to secure information or records. The only provision I am aware of that allows an agent to disclose any information to a non law enforcement person or entity is an investigative disclosure to obtain information. The standard on investigative disclosures is to disclose only the minimum amount of information necessary to obtain the information required. In my twenty six and one-half years experience I have never provided a non law enforcement entity or person a summary or synopsis of my case

or one of my agent's cases to obtain information or records.

/s/ Mark Riden

State of Texas
County of El Paso

Mark Riden, personally appeared before me, and first being duly sworn declared that he signed this affidavit, and further states that he has read the affidavit, and the statements contained therein are true.

Sworn to and subscribed before me this 18th day of March, 1997.

/s/ Edward Wagner
Notary Public
My commission expires on 9/29/99